

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

SIGHT SCIENCES, INC.,	)	
	)	
Plaintiff,	)	<b>Redacted - Public Version</b>
	)	
v.	)	C.A. No. 21-1317-GBW-SRF
	)	
IVANTIS, INC., ALCON RESEARCH	)	
LLC, ALCON VISION, LLC, and ALCON	)	
INC.,	)	
	)	
Defendants.	)	

**LETTER TO THE HONORABLE JUDGE SHERRY R. FALLON**  
**FROM KAREN E. KELLER**

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Dated: June 28, 2023

Dear Judge Fallon:

## I. Defendants' Clawbacks

Plaintiff agreed that disclosure of privileged material “shall not operate as a waiver” and that the “Parties will determine inadvertence solely based on the good faith representation of the Producing Party.” D.I. 69 at 15. When Defendants discovered a vendor issue in May 2023 that resulted in the inadvertent production of potentially privileged documents, Defendants began to claw back those documents to closely re-review them and produce redacted versions and accompanying privilege logs. Defendants have been diligently doing so for weeks, while at the same time taking or defending multiple depositions a week. In direct contravention of the Protective Order, Sight argues Defendants have waived privilege by inadvertent production, but Defendants have done no such thing and Sight’s motion should be denied.

**Details Regarding Ivantis’s FTO Analyses:** A freedom-to-operate (“FTO”) analysis at the request of a client of competitors’ patents is fundamentally privileged. Sight argues Ivantis’s FTO analyses of Sight’s patents are allegedly not privileged by: (i) misconstruing the FTO documents, arguing they contain only “non-privileged facts”; and (ii) incorrectly arguing Ivantis waived privilege.

Sight identifies three documents (D.I. 222, Exs. 2-4) it alleges reveal details about which Sight patents Ivantis performed FTO analysis on, yet falsely asserts these documents are not privileged. The filenames reflect that they hail from an “FTO Opinion Patent Database,” which indicates they reflect privileged analysis. The fact that entries in the “Attorney Notes” column may also contain factual information is beside the point: every communication between a client and attorney consists of *some* factual scenario about which the client seeks legal advice; that does not turn it into a purely fact-finding exercise devoid of legal advice. *See First Quality Tissue, LLC v. Irving Consumer Prod. Ltd.*, 2022 WL 971581 (D. Del. Mar. 31, 2022) (“privilege applies to communications involving technical information when they are made for the purpose of providing or obtaining legal advice.”). The document *as a whole* reflects an attorney-client communication, including *which particular patents* were selected for analysis, when, and for what purpose.

Sight’s argument that Defendants waived privilege is equally unavailing. Sight’s single argument for waiver is that Ivantis’s CEO Dave Van Meter previously testified that Ken Galt gave “investors overviews of Ivantis’ FTO relative to Sight’s patents.” D.I. 222 at 2. Mr. Van Meter simply stated that investors generally “ask us for an overview of the patent landscape, and that’s where Ken gives them *overview* of our freedom to operate.” D.I. 189, Ex. 9 at 87:1-13. A general description of what lawyers and their agents do does not waive privilege. *See Chicago Bd. Options Exch., Inc. v. Int’l Sec. Exch., LLC*, 2008 WL 3285751 at \*3 (N.D. Ill. Aug. 8, 2008) (“There is a significant difference between indicating the fact or topic of a confidential communication with an attorney and revealing its content. The latter effects a waiver of the attorney-client privilege, while the former does not.”). Sight points to no disclosure of any *particular* patent to investors for any *particular* FTO. Thus, there was no waiver.

**Documents from Cari Stone Deposition:** Sight identifies five documents it contends are either not privileged or for which privilege was waived. Regarding IVANTIS\_SS\_00206226, Sight

specifically agreed at the deposition that allowing questioning on that document would not act as a waiver. Ex. 1 (Stone Dep. Tr.) at 59:7-20, 63:11-23. IVANTIS\_SS\_00206226 also includes comments directed to lawyers, which clearly reflect requests for legal advice. *See* D.I. 222, Ex. 5 at 1 [REDACTED] 2 [REDACTED]. Indeed, Sight does not actually request that the Court find waiver. IVANTIS\_SS\_00206226 remains privileged and has been properly clawed back.

As to IVANTIS\_SS\_00331502, Ms. Stone was questioned only on slides 2, 6, 21, 23, and 27, and Defendants' counsel clawed the document back during the deposition. Ex. 1 (Stone Dep. Tr.) at 64:2-4, 66:21, 69:23-25, 72:9-10, 73:21-22, 75:12-13, 119:4-14. Plaintiff's argument for waiver relies on *Lee Nat. Corp. v. Deramus*, 313 F. Supp. 224 (D. Del. 1970), a case predating the changes to the Federal Rules for inadvertent production, now codified in Fed. R. Evid. 502. That case dealt with information that was "freely and voluntarily revealed" during deposition, not a case like this one where counsel promptly clawed back documents. *Id.* at 227. Plaintiff's other cases are similarly unavailing. *See Nationwide Life Ins. Co. v. St. Clair Mobile Home Parks, LLC*, 2005 U.S. Dist. LEXIS 30348, at \*20 (D. Mo. Dec. 1, 2005) ("voluntarily providing" testimony, not inadvertent disclosure under Rule 502); *Hostetler v. Dillard*, 2014 WL 6871262, at \*3-4 (S.D. Miss. Dec. 3, 2014) (testimony without objection "regarding the substance and content" of attorney-client meeting). Here, Fed. R. Evid. 502(d) allows extra protection for inadvertent production by allowing parties to agree to protection beyond the default rules, which the parties did in the Protective Order: "production of [privileged] information **shall not** operate as a waiver" and the "Parties **will not conduct an inquiry under FRE 502(b)** to determine whether information was produced inadvertently." D.I. 69 at 15. Courts have held the privilege applies despite the allowance of deposition questioning, particularly when waiver "would be inconsistent with the Court's determination that the parties intended for their protective order to override Rule 502(b)." *In re Testosterone Replacement Therapy Prod. Liab. Litig.*, 301 F. Supp. 3d 917, 928 (N.D. Ill. 2018) (upholding privilege claim over document introduced at deposition); *see also In re Google Digital Advert. Antitrust Litig.*, 2023 WL 196146, at \*2 (S.D.N.Y. Jan. 17, 2023) ("Where an Order sets forth the procedure for clawing back purportedly protected documents, the terms of that Order control and not the principles that might apply had there been no Order."). Defendants' claw-back of IVANTIS\_SS\_00331502 and related deposition testimony is proper.

On further review of IVANTIS\_SS\_00208219, -00208990, and -00321530, Defendants no longer seek to claw back those documents.

**Other Claw-backs:** Defendants first identified their vendor issue to Sight on June 2, 2023, and Defendants have been working diligently to remediate the issue. *See* Ex. 2 (June 2, 2023 Letter from A. Teng). Sight argues that because of the sheer number of claw-backs, the production presumptively cannot be inadvertent. Yet, of the more than 35,000 documents Defendants produced, Sight oddly points to 225 claw-backs. Sight offers no explanation for why such a small proportion of inadvertent disclosures should be deemed intentional. Indeed, Sight points to only 28 documents it contends should not have been included in the claw-backs.

First, Sight identifies an email from Kenneth Galt (Ivantis VP R&D) to Wayne Noda (an Ivantis consultant) and argues it is not privileged because neither Mr. Galt nor Mr. Noda are lawyers and

because Mr. Noda was not an Ivantis employee. Sight's arguments intentionally ignore that Mr. Noda was an Ivantis consultant tasked with designing a product for Ivantis that he helped to clear from an FTO standpoint. *In re Flonase Antitrust Litig.*, 879 F. Supp. 2d 454, 459–60 (E.D. Pa. 2012) (applying attorney-client privilege to communications shared with independent contractor). Sight also myopically focuses on the fact that the email does not include a lawyer when it is clear from the communication it was sent at the behest of counsel. *See Shire Dev. Inc. v. Cadila Healthcare Ltd.*, 2012 WL 5247315 (D. Del. June 15, 2012) (“privileged communications may be shared by non-attorney employees ‘in order to relay information requested by attorneys.’”). The email relays which patents were analyzed, reflecting the substance of the attorney-client communications. Moreover, it relates solely to a product that is not accused in this case.

Second, Sight argues “Ivantis Integration IT Playbook” presentations are not privileged because they were sent to third parties, “such as KPMG, KME Systems, and/or Arbala systems.” Yet these documents reflect legal advice, in particular by referencing [REDACTED]. *See* D.I. 222, Ex. 14 at -55. While Sight attached only a single version of this document “as representative of this group of related presentations,” Sight fails to mention that other versions of the same document have more extensive references to Alcon’s litigation hold process, which is both privileged and not within the proper scope of discovery. *See* Section II.A, *infra*. Nor has Sight explained why sharing that legal advice with Alcon’s consultants who were assisting with the integration of Ivantis into Alcon would waive privilege. It does not.

Third, Sight points to two “Ivantis Integration” presentations, D.I. 222, Ex. 15, IVANTIS\_SS\_00331837. Defendants withdraw their claw-back of these two documents.

## II. Sight’s 30(b)(6) Topics

**Topics 5/6:** Because there was a finding of spoliation against Ivantis in a prior litigation, Sight now seeks 30(b)(6) testimony regarding Defendants’ efforts to preserve documents for this litigation. But “[d]iscovery regarding efforts undertaken ... to preserve documents in anticipation of litigation is barred under the Court’s Default Standard for Discovery of ESI and Fed. R. Civ. P. 26(b)(3)(A) and (B), particularly in the absence of a credible allegation of spoliation.” *See* Oral Order, *Shilpa Pharma, Inc. v. Novartis Pharms. Corp.*, C.A. No. 21-558-SRF, at 1 (D. Del. June 8, 2022).

Sight has presented absolutely no evidence that could credibly support a finding of spoliation in *this case*, which is its burden. Spoliation first requires that there exist a duty to preserve documents, which occurs when a party reasonably foresees a specific litigation. *See Bull v. United Parcel Serv., Inc.*, 665 F.3d 68 (3d Cir. 2012). But logic dictates that foreseeability must relate to the patents actually at issue, not any interest in any patents at any time. For instance, Sight cannot reasonably argue that there would be a credible allegation of spoliation in this case if the *Glaukos* litigation had never happened and Ivantis deleted documents in the ordinary course prior to anticipating litigation in this case. Sight’s opportunistic decision to sue the day after the *Glaukos* litigation settled does not suffice to support a spoliation claim in this case.

A review of Sight's allegations quickly demonstrates that its allegations are not credible. Sight points out that Ivantis conducted FTO analyses between 2008 and 2018. *See* Ex. 4 (Sight's Objs. to Defs. Interrog. No. 21). But conducting evaluations of the IP landscape, without more, does not trigger a duty to preserve. *See Dorman Prod., Inc. v. PACCAR, Inc.*, 2015 WL 12826477, at \*3 (E.D. Pa. Nov. 5, 2015) (policy about acquiring patents did not give rise to objectively foreseeable likelihood of litigation). Nor does the 2009 meeting between Doug Roeder and Paul Badawi, which occurred *before* the issuance of any Asserted Patent and during which Mr. Badawi never made any connection between the Hydrus and his patent application (which could or could not issue). *See* Ex. 5 (P. Badawi Rough Dep. Tr. I) at 214:23-216:17 (Mr. Badawi could not recall telling Mr. Roeder his belief the '068 application covered Hydrus). In fact, Sight witnesses have confirmed that [REDACTED]

[REDACTED] *See id.* at 218:9-12; Ex. 7 (Selnick Dep. Tr.) at 59:1-14. Sight is lightyears away from meeting its burden to show a "credible allegation of spoliation."

Further, Sight has shown nothing indicating Ivantis willfully destroyed or deleted evidence in anticipation of this litigation. Rather, Sight hangs its hat on the spoliation finding in the *Glaukos* litigation. But the court's finding of spoliation in *Glaukos* relied on facts and circumstances not at issue here, including that: 1) an inventor of the Glaukos patents informed Ivantis that Hydrus "must infringe" those patents; 2) Ivantis hired outside patent litigation counsel to conduct diligence related to Glaukos' patents; 3) multiple investors declined to invest in Ivantis due to concerns about patent litigation with Glaukos; and 4) Ivantis began preparing IPRs to challenge Glaukos's patents before Glaukos filed suit. *See Glaukos Corp. v. Ivantis, Inc.*, 2020 WL 10501850, at \*3-4 (C.D. Cal. June 17, 2020). That the same product is at issue here does not support a finding of spoliation; Sight had no reason to anticipate litigation with respect to the Asserted Patents in this case.

Sight has presented no evidence supporting a finding of willfulness. "Mere knowledge of the patent cannot support an allegation of willful infringement." *See iFIT Inc. v. Peloton Interactive, Inc.*, 2022 WL 609605 at \*2 (D. Del. Jan. 28, 2022). While Sight contends "changes in document destruction or retention policies after obtaining knowledge of the patents and of infringement support a finding of willfulness," Sight's own witnesses admit that Sight itself never put such a formal policy in place for its own documents and [REDACTED]. Ex. 6 (P. Badawi Rough Dep. Tr. II) at 6:6-19; Ex. 5 (P. Badawi Rough Dep. Tr. I) at 218:9-12; Ex. 7 (Selnick Dep. Tr.) at 59:1-14.

**Topics 71/69 and 72/70:** With respect to these Topics, Sight admits it is aware that Ivantis conducted FTO analyses. Sight questioned Defendants' witnesses regarding the non-privileged facts it seeks. *See, e.g.,* Ex. 8 (Shay Dep. Tr.) at 34:2-37:1, 46:9-52:21. Sight now wants to probe privileged aspects of FTO, including whether FTO was done "regarding the Asserted Patents," D.I. 222 at 4, which reflects the contents of attorney-client communications, including whether any analysis was requested in relation to a particular patent. That is privileged.

### III. Defendants' Deposition Notices

Defendants' 30(b)(1) notices of Sabrina Katz and Sara Sloan Marcus and its second 30(b)(6) notice were timely served with at least 14 days remaining in discovery, which is reasonable



notice. *See* Ex. 9 (Sabrina Katz); Ex. 10 (Sarah Sloan Marcus); D.I. 222, Ex. 21; D. Del. L. R. 30.1 (“‘reasonable notice’ for the taking of depositions... shall be not less than 10 days.”). Plaintiff’s arguments to the contrary are without merit.

Defendants’ deposition notices of Sabrina Katz and Sara Sloan Marcus do not seek duplicative testimony. Sight has accused Ivantis of improperly co-promoting Hydrus through Andy Rivero in Florida. D.I. 59 ¶74. Ms. Katz and Ms. Marcus are both Sight representatives who work and consult directly with the ophthalmologists in that region and are thus likely to have information related to those allegations, as well as regarding Sight’s own co-promotion. *See, e.g.*, Ex. 11 (SGHT0044913) (email from Ms. Marcus re co-promoting); Ex. 12 (SGHT0044916) (discussing “field intel related to Ivantis and their promotion of the cannula”). While Sight suggests Defendants should rely on other depositions, Ms. Katz and Marcus are more likely to have first-hand information. *See* Ex. 13 (Phelps Dep. Tr.) at 78:24-79:5, 107:24-108:7; Ex. 14 (Plank Dep. Tr.) at 24:8-28:15. As the parties have already agreed to take depositions after the close of fact discovery, additional depositions would not disturb that deadline, and Defendants have already moved to amend the case schedule to account for out-of-time depositions. *See* D.I. 223.

Defendants’ second 30(b)(6) notice is also proper. Sight asserts Defendants failed to obtain leave before serving its second notice, but leave is not required. *See Cedars-Sinai Med. Ctr. v. Quest Diagnostics Inc.*, 2019 WL 12520126 (C.D. Cal. Apr. 1, 2019) (leave not required where topics do not overlap); *Mobile Telecommunications Techs., LLC v. Blackberry Corp.*, 2015 WL 12698062 (N.D. Tex. July 15, 2015) (“Plaintiff need not seek leave for additional 30(b)(6) deposition testimony on topics different from those previously noticed.”). Further, Sight rewrites history regarding the Scheduling Order negotiations. It was **Sight**, not Defendants, who changed its **own** position, first proposing that “Parties may notice and take **multiple** 30(b)(6) depositions within their hours limits,” but later reversing course and proposing that the “Parties may notice and take **one** 30(b)(6) deposition of each adverse party within their hours limits.” D.I. 37 at 3. Throughout the parties’ exchanges, Defendants’ proposal remained agnostic as to the number of 30(b)(6) depositions. *See id.* at 4. The Court ultimately adopted Defendants’ agnostic proposal.

Defendants’ second 30(b)(6) notice is not duplicative, instead containing targeted Topics directed at necessary testimony. For example, Topic 65 is directed at Sight’s response to Defendants’ Interrogatory No. 12 concerning the Sight accounts purportedly “negatively impacted” by Defendants’ alleged infringement. *See* Ex. 3 (Pl.’s Resps. & Objs. to Defs.’ Interrog. No. 12); D.I. 222, Ex. 21. Defendants seek testimony here because these allegedly “negatively impacted” accounts are the basis for Sight’s lost profits arguments. Moreover, it was not until June 1, 2023 that Sight identified documents in response to Interrogatory No. 12, identifying these “negatively impacted” accounts. Defendants were not dilatory.

Similarly, Topics 58, 59, 61, 62, 63, and 64 are relevant to **Defendants’** allegations of spoliation, which, unlike Sight’s, are credible. Paul Badawi, Sight’s CEO, testified that he believed Hydrus infringed since 2008. *See* Ex. 5 (P. Badawi Rough Dep. Tr. I) at 81:5-10; D.I. 222, Ex. 21. Yet from 2006 until 2021, [REDACTED], and its paltry document production raises serious concerns that numerous documents have been destroyed. Defendants should be allowed to depose a witness on those issues.

Respectfully submitted,

*/s/ Karen E. Keller*

Karen E. Keller (No. 4489)

cc: Clerk of Court (by CM/ECF & Hand Delivery)  
All Counsel of Record (by CM/ECF & Email)



# EXHIBIT 1

(excerpted)

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

SIGHT SCIENCES, INC.,        )  
  )  
                          Plaintiff,        )  
  )  
                          vs.                ) C.A. No.: 21-1317-GBW-SRF  
  )  
IVANTIS, INC., et al.,        )  
  )  
                          Defendants.        )  
  )

REMOTE VIDEOGRAPHED  
DEPOSITION OF CARI STONE  
COSTA MESA, CALIFORNIA  
THURSDAY, JUNE 1, 2023

Reported by:  
LAURA A. RUTHERFORD, RPR  
CSR No. 9266

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1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF DELAWARE  
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5 SIGHT SCIENCES, INC., )  
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6 Plaintiff, )  
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7 vs. ) C.A. No.: 21-1317-GBW-SRF  
8 )  
8 IVANTIS, INC., et al., )  
9 )  
9 Defendants. )  
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14 )  
15 Remote videographed deposition of CARI STONE,  
16 taken on behalf of Plaintiff, at 650 Town Center Drive,  
17 10th Floor, Costa Mesa, California, beginning at 9:06  
18 a.m., and ending at 1:46 p.m., on Thursday, June 1, 2023,  
19 before LAURA A. RUTHERFORD, RPR, Certified Shorthand  
20 Reporter No. 9266.  
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22  
23  
24  
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10:33	1	MR. ARMON: All right.	10:40	1	A. Yes. This is a draft document, as Austin
10:33	2	Going off the record.	10:40	2	said. Yep.
10:33	3	THE VIDEOGRAPHER: Thank you. Off the	10:40	3	Q. Okay.
10:33	4	record. The time is 10:33 a.m.	10:40	4	And, Ms. Stone, if you direct your attention
10:33	5	(Pause in proceeding.)	10:40	5	to page 2, you'll see that there are various comments that
10:38	6	THE VIDEOGRAPHER: On the record. The time	10:40	6	are directed to -- to you.
10:38	7	is 10:38 a.m.	10:40	7	So this is something that you saw at some
10:38	8	MR. TENG: All right.	10:40	8	prior point in time; correct?
10:38	9	Orion, I just want to make a record about	10:40	9	A. Yes.
10:38	10	Exhibit 7 here. As I understand it, this document is a	10:40	10	MR. TENG: Objection. Vague.
10:38	11	draft document. It's not the final version of the	10:40	11	Q. BY MR. ARMON: All right.
10:38	12	document. And it appears to have comments that refer to	10:40	12	[REDACTED]
10:38	13	communications with counsel.	[REDACTED]	[REDACTED]	[REDACTED]
10:38	14	This document appears to have been	[REDACTED]	[REDACTED]	[REDACTED]
10:38	15	inadvertently produced in this case. And so, therefore, I	[REDACTED]	[REDACTED]	[REDACTED]
10:38	16	object to the use of this particular document in the	[REDACTED]	[REDACTED]	[REDACTED]
10:38	17	deposition.	[REDACTED]	[REDACTED]	[REDACTED]
10:38	18	But if there's a final draft of the document	[REDACTED]	[REDACTED]	[REDACTED]
10:38	19	that you want to ask the witness questions about, I would	[REDACTED]	[REDACTED]	[REDACTED]
10:38	20	certainly permit that. But this document needs to be	[REDACTED]	[REDACTED]	[REDACTED]
10:38	21	clawed back and destroyed.	[REDACTED]	[REDACTED]	[REDACTED]
10:38	22	MR. ARMON: So, Austin, I think there's two	[REDACTED]	[REDACTED]	[REDACTED]
10:39	23	possibilities here. We can deal with the claw back	[REDACTED]	[REDACTED]	[REDACTED]
10:39	24	separately, or you can let me ask a couple questions, and	[REDACTED]	[REDACTED]	[REDACTED]
10:39	25	if you want to instruct her accordingly, that may allow us	[REDACTED]	[REDACTED]	[REDACTED]
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10:39	1	to avoid holding the deposition open while this issue is	[REDACTED]	[REDACTED]	[REDACTED]
10:39	2	separately addressed.	[REDACTED]	[REDACTED]	[REDACTED]
10:39	3	So if you'd like to go that way, I think it	[REDACTED]	[REDACTED]	[REDACTED]
10:39	4	might be more efficient. If not, that's fine. But we may	[REDACTED]	[REDACTED]	[REDACTED]
10:39	5	be asking Ms. Stone to reappear at some point, which I'm	[REDACTED]	[REDACTED]	[REDACTED]
10:39	6	sure she probably would prefer not to do.	[REDACTED]	[REDACTED]	[REDACTED]
10:39	7	MR. TENG: I'd say possibly if -- one, if	[REDACTED]	[REDACTED]	[REDACTED]
10:39	8	you'll stipulate that asking the questions in no way	[REDACTED]	[REDACTED]	[REDACTED]
10:39	9	waives any claim of privilege or interferes with the claw	[REDACTED]	[REDACTED]	[REDACTED]
10:39	10	back process, we can handle separately. And, certainly,	[REDACTED]	[REDACTED]	[REDACTED]
10:39	11	we'll evaluate the question as to whether or not it calls	[REDACTED]	[REDACTED]	[REDACTED]
10:39	12	for privilege, and she can answer.	[REDACTED]	[REDACTED]	[REDACTED]
10:39	13	MR. ARMON: Yeah, that's fine. As to this	[REDACTED]	[REDACTED]	[REDACTED]
10:39	14	document only, and nothing else in the case, I'll	[REDACTED]	[REDACTED]	[REDACTED]
10:39	15	stipulate that allowing Ms. Stone to answer my questions	[REDACTED]	[REDACTED]	[REDACTED]
10:40	16	with respect to this exhibit, or to follow your	[REDACTED]	[REDACTED]	[REDACTED]
10:40	17	instructions, wouldn't be any basis for a waiver of your	[REDACTED]	[REDACTED]	[REDACTED]
10:40	18	privilege rights if you have any.	[REDACTED]	[REDACTED]	[REDACTED]
10:40	19	MR. TENG: All right.	[REDACTED]	[REDACTED]	[REDACTED]
10:40	20	We can proceed with that understanding.	[REDACTED]	[REDACTED]	[REDACTED]
10:40	21	Q. BY MR. ARMON: Okay.	[REDACTED]	[REDACTED]	[REDACTED]
10:40	22	So, Ms. Stone, just let's start at the top of	[REDACTED]	[REDACTED]	[REDACTED]
10:40	23	this document. I believe you said that you recognized	[REDACTED]	[REDACTED]	[REDACTED]
10:40	24	Exhibit 7.	[REDACTED]	[REDACTED]	[REDACTED]
10:40	25	Is that true?	[REDACTED]	[REDACTED]	[REDACTED]

16 (Pages 58 to 61)

		Page 62			Page 64
10:42	1	[REDACTED]	10:45	1	A. (Witness complies.)
[REDACTED]	[REDACTED]	[REDACTED]	10:45	2	Q. This document is labeled, first page,
[REDACTED]	[REDACTED]	[REDACTED]	10:45	3	Ivantis_SS_00331502. Just let me know if you recognize
[REDACTED]	[REDACTED]	[REDACTED]	10:45	4	it.
[REDACTED]	[REDACTED]	[REDACTED]	10:45	5	A. Last three numbers are 502; is that correct?
[REDACTED]	[REDACTED]	[REDACTED]	10:45	6	Q. I'm sorry. I didn't hear that.
[REDACTED]	[REDACTED]	[REDACTED]	10:45	7	A. The last three numbers are 502; is that
[REDACTED]	[REDACTED]	[REDACTED]	10:45	8	correct?
[REDACTED]	[REDACTED]	[REDACTED]	10:45	9	Q. That's right. Those are just unique
[REDACTED]	[REDACTED]	[REDACTED]	10:45	10	identifiers for documents that the lawyers in this
[REDACTED]	[REDACTED]	[REDACTED]	10:45	11	litigation have affixed to documents.
[REDACTED]	[REDACTED]	[REDACTED]	10:45	12	A. Right. I just wanted to make sure I was
[REDACTED]	[REDACTED]	[REDACTED]	10:45	13	looking at the correct one.
[REDACTED]	[REDACTED]	[REDACTED]	10:45	14	Q. Yes, you are.
[REDACTED]	[REDACTED]	[REDACTED]	10:45	15	MR. TENG: Ms. Stone, can you please review
[REDACTED]	[REDACTED]	[REDACTED]	10:45	16	the document here?
[REDACTED]	[REDACTED]	[REDACTED]	10:45	17	I see that this is, again, marked as
[REDACTED]	[REDACTED]	[REDACTED]	10:45	18	privileged and confidential and has some draft markings.
[REDACTED]	[REDACTED]	[REDACTED]	10:45	19	Could you review the document, and let me know whether or
[REDACTED]	[REDACTED]	[REDACTED]	10:45	20	not this contains any comments from attorneys?
[REDACTED]	[REDACTED]	[REDACTED]	10:46	21	THE WITNESS: Sorry. I'm just reading
[REDACTED]	[REDACTED]	[REDACTED]	10:46	22	through.
[REDACTED]	[REDACTED]	[REDACTED]	10:46	23	So this page is out?
[REDACTED]	[REDACTED]	[REDACTED]	10:46	24	MR. TENG: There's notes here. Scroll up.
[REDACTED]	[REDACTED]	[REDACTED]	10:47	25	Scroll up.
		Page 65			
[REDACTED]	[REDACTED]	[REDACTED]	10:47	1	THE WITNESS: Page 4; right?
[REDACTED]	[REDACTED]	[REDACTED]	10:47	2	MR. TENG: I'll direct your attention, and
[REDACTED]	[REDACTED]	[REDACTED]	10:47	3	then, hopefully, we can --
[REDACTED]	[REDACTED]	[REDACTED]	10:47	4	So are those speakers notes, or do those
[REDACTED]	[REDACTED]	[REDACTED]	10:47	5	contain any notes from counsel?
[REDACTED]	[REDACTED]	[REDACTED]	10:47	6	THE WITNESS: Those are speaker notes, but go
10:44	7	Marking another Exhibit 8.	10:47	7	back to, like, slide -- what does this mean?
10:44	8	(Exhibit Number 8 was marked for	10:47	8	MR. TENG: That just means that it's been
10:44	9	identification.)	10:47	9	redacted for privilege. That's fine.
10:44	10	Q. BY MR. ARMON: It's entitled --	10:47	10	So my question was directed as to whether any
10:44	11	MR. TENG: Sorry, Mr. Armon. If you can give	10:48	11	of the comments in the notes included anything?
10:44	12	me just a moment to make the record?	10:48	12	THE WITNESS: Not that I know of.
10:44	13	Again, just to be clear on the record here,	10:48	13	MR. TENG: Okay.
10:44	14	if we can mark whatever is Exhibit 7 as something that	10:48	14	Apologies for the interruption, Counsel. If
10:44	15	defendants have identified as containing attorney/client	10:48	15	you wouldn't mind restating your question and continue?
10:44	16	privileged information that was inadvertently produced in	10:48	16	THE WITNESS: So this is --
10:44	17	this case, and that defendants have requested that the	10:48	17	MR. TENG: That just means it's been redacted
10:44	18	plaintiffs, Sight Sciences, follow the protocol in this	10:48	18	by the defense in the case before it was produced to
10:44	19	case for claw back.	10:48	19	remove any privileged information, so the rest of it would
10:44	20	MR. ARMON: All right. Counsel, just follow	10:48	20	be --
10:44	21	up with us in writing on that. We'll address it after the	10:48	21	THE WITNESS: Fair game?
10:44	22	deposition, and subject to the stipulation I made with	10:48	22	MR. TENG: Yep.
10:44	23	respect to the waiver issue.	10:48	23	THE WITNESS: Okay. Okay.
10:44	24	Q. BY MR. ARMON: Ms. Stone, let's turn to	10:48	24	Q. BY MR. ARMON: Okay.
10:44	25	Exhibit 8, please.	10:48	25	Ms. Stone, appreciate your review of Exhibit

17 (Pages 62 to 65)

Page 66

Page 68

10:48 1 8. Are you comfortable, based on your review, that the  
10:48 2 Exhibit 8 does not contain attorney/client privileged  
10:48 3 information based on the look that counsel asked you to  
10:48 4 perform?  
10:48 5 A. Yeah. I mean, based on my cursory -- this is  
10:48 6 a 20-some page document, you know. I didn't have a chance  
10:48 7 to read all of it.  
10:49 8 Q. Okay. All right.  
10:49 9 Let's proceed then.  
10:49 10 Do you recognize this Exhibit 8 titled  
10:49 11 "Project Ithica" from November 2021?  
10:49 12 A. I do.  
10:49 13 Q. Okay.  
10:49 14 [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED] [REDACTED]  
10:49 18 Q. Did you have any role in preparing Exhibit 8?  
10:49 19 A. Yeah. I was part of the team.  
10:49 20 Q. Okay.  
10:49 21 Let's turn to page 2 of the exhibit, please.  
10:49 22 A. (Witness complies.)  
10:49 23 Q. It's titled "NOV BOD Ithica Outline." Does  
10:50 24 that mean November, Board of Directors, Ithica Outline?  
10:50 25 A. Correct.

[illegible]

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[illegible]

10:54	22	Q. Okay. All right.
10:54	23	Let's jump down a few pages. I'll move you
10:54	24	to page 6 of Exhibit 8, a slide titled, "Key Findings and
10:54	25	Mitigation Strategy - Pipeline."

18 (Pages 66 to 69)

Page 70

10:54	1	Are you there?
10:54	2	A. Yes.
10:54	3	Q. Okay.
10:54	4	



The diagram consists of a vertical column of 20 black bars on the left, each of a different height. To the right of this column is a vertical dashed line. From this dashed line, a series of horizontal black bars of varying lengths extend to the right. These horizontal bars are grouped into several clusters, with some bars spanning across multiple clusters. The overall shape resembles a stylized 'E' or a comb.

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10:56 1

10:56 2

10:56 3

10:56 4

10:56 5

10:56 6

10:56 7

10:56 8

10:56 9

10:56 10

10:56 11

Let's jump to slide 21, please. I'll move you there.

[illegible]

The image shows a document page that has been almost entirely redacted. On the left side, there is a vertical column of 20 small black squares, likely representing a list or index. The rest of the page is covered by a large, solid black rectangular redaction box, which obscures all text and graphics. Only a small portion of the top right corner is visible, showing a small black rectangle.



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Page 76

11:00 1 A. Right.  
11:00 2 Q. Was there a business person at Alcon who  
11:00 3 played any role in approving the terms of the  
11:00 4 Glaukos/Ivantis settlement?  
11:00 5 A. Approving the terms of the Glaukos  
11:00 6 settlement? No, not that I know of.  
11:00 7 Q. Okay.  
11:00 8 Did Ivantis apprise Alcon of its -- the  
11:00 9 developments around its settlement negotiations with  
11:00 10 Glaukos before it actually settled that litigation?  
11:00 11 MR. TENG: Objection. Vague.  
11:00 12 And caution the witness, the extent that  
11:00 13 Counsel's question is calling for any privileged  
11:00 14 information you may have discussed with attorneys or one  
11:00 15 of our attorneys, to not reveal that in your answer.  
11:00 16 THE WITNESS: I don't know, and I was not  
11:00 17 involved.  
11:01 18 Q. BY MR. ARMON: Okay.  
11:01 19 So you had no input around whether Ivantis  
11:01 20 should settle with Glaukos on the terms that it ultimately  
11:01 21 agreed to?  
11:01 22 A. No, I did not.  
11:01 23 Q. Okay.  
11:01 24 [REDACTED]

[illegible][illegible]

11:05 12 Let's look at a new exhibit. This is marked  
11:05 13 as Exhibit 9.  
11:05 14 (Exhibit Number 9 was marked for  
11:05 15 identification.)  
11:05 16 Q. BY MR. ARMON: It's a document titled,  
11:05 17 "Ithica Pricing Scenario Workshop, September 20, 2021."  
11:05 18 The first page number, Ivantis\_SS\_00331626.  
11:05 19 A. Yeah.  
11:05 20 MR. TENG: And, Mr. Armon, if you'd allow me  
11:05 21 just to make a brief remark on the record here?  
11:05 22 As we've been going through this document and  
11:05 23 through questions, it appears that there may be some  
11:05 24 comments in this document that were not fully redacted for  
11:05 25 privilege and may contain attorney/client notes that were

Page 118		Page 120	
13:43	1 you've had any non-privileged communications, and allow me	13:45	1 is 1:46 p.m.
13:43	2 time to instruct you or get an objection on the record.	13:46	2 MR. TENG: I'll take a rough, please.
13:43	3 THE WITNESS: Can you restate the question	13:46	3 THE REPORTER: Thank you.
13:43	4 again, just so I'm very clear about what you're asking?	13:46	4 (Ending time: 1:46 p.m.)
13:43	5 Q. BY MR. ARMON: Yes.	5	5
13:43	6 During your time at Alcon, were you involved	6	6
13:43	7 in any business discussions or evaluation of the magnitude	7	7
13:43	8 of money damages that Alcon or Ivantis might be required	8	8
13:43	9 to pay to Sight Sciences for infringing its patents?	9	9
13:44	10 A. Just with my legal team.	10	10
13:44	11 Q. Okay.	11	11
13:44	12 MR. TENG: And, Mr. Armon, just to avoid	12	12
13:44	13 confusing the witness, I appreciate you trying to ask your	13	13
13:44	14 questions without inquiring.	14	14
13:44	15 I'm just going to instruct the witness not to	15	15
13:44	16 answer these questions and -- on the basis of	16	16
13:44	17 attorney/client privilege.	17	17
13:44	18 Q. BY MR. ARMON: You are going to follow that	18	18
13:44	19 instruction?	19	19
13:44	20 A. Yeah.	20	20
13:44	21 Q. Okay.	21	21
13:44	22 I appreciate your time. I don't have any	22	22
13:44	23 further questions.	23	23
13:44	24 A. Are you going to ask me?	24	24
13:44	25 MR. TENG: Let me just review here if I have	25	25
Page 119			
13:44	1 any questions.	1	1
13:44	2 I'd like to go ahead and designate the	2	2
13:45	3 transcript as highly confidential, attorney's eyes only.	3	3
13:45	4 Also, just to recap some of the discussion	4	4 I, CARI STONE, do hereby declare under penalty of
13:45	5 earlier today, during questioning, counsel for plaintiffs	5	5 perjury that I have read the foregoing transcript of my
13:45	6 introduced a number of exhibits, including at least	6	6 deposition; that I have made such corrections as noted
13:45	7 Exhibit 7, 8 and 12, that appear to have been	7	7 herein, in ink, initialed by me, or attached hereto; that
13:45	8 inadvertently produced with information concerning or	8	8 my testimony as contained herein, as corrected, is true
13:45	9 containing confidential attorney/client privileged	9	9 and correct.
13:45	10 information.	10	10 EXECUTED this ____ day of _____,
13:45	11 We instruct that these exhibits should be	11	11 at _____,
13:45	12 clawed back, and defense will review the transcript and	12	12 (City) (State)
13:45	13 the exhibit, follow up regarding any other documents that	13	13
13:45	14 may need to be clawed back.	14	14
13:45	15 MR. ARMON: So, Austin, other than the one	15	15
13:45	16 stipulation I provided on the record, you'll need to	16	16
13:45	17 follow up with us after the deposition today, and we'll	17	17 CARI STONE
13:45	18 address those issues with you.	18	18
13:45	19 MR. TENG. Understood we'll follow up in	19	19
13:45	20 writing.	20	20
13:45	21 MR. ARMON: All right.	21	21
13:45	22 Thanks very much, Ms. Stone. I appreciate	22	22
13:45	23 your time.	23	23
13:45	24 THE WITNESS: Sure. Thank you.	24	24
13:45	25 THE VIDEOGRAPHER: Off the record. The time	25	25

# EXHIBIT 2

## KIRKLAND & ELLIS LLP

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June 2, 2023

**By E-mail (oarmon@cooley.com)**

**HIGHLY CONFIDENTIAL  
ATTORNEYS-EYES ONLY**

Orion Armon  
Cooley LLP  
1144 15th Street  
Suite 2300  
Denver, CO 80202-2686

Re: *Sight Sciences, Inc. v. Ivantis, Inc., et al.*, 1:21-cv-01317-GBW-SRF (D. Del.)

Orion:

During Ms. Stone's deposition yesterday, I notified you that exhibits were introduced that contain inadvertently produced attorney-client privileged information, including the following:

1. Exhibit 7 (IVANTIS\_SS\_00206226) – Confidential draft document seeking legal advice from counsel
2. Exhibit 8 (IVANTIS\_SS\_00331502) – Confidential draft presentation reflecting confidential attorney-client communications
3. Exhibit 12 (IVANTIS\_SS\_00208219) – Confidential draft presentation reflecting confidential attorney-client communications

After further review of the exhibits, we have identified two additional exhibits containing privileged information that were also inadvertently produced.

1. Exhibit 11 (IVANTIS\_SS\_00208990) – Confidential draft presentation reflecting confidential attorney-client communications
2. Exhibit 19 (IVANTIS\_SS\_00321530) – Confidential draft presentation reflecting confidential attorney-client communications

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Orion Armon  
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We will supplement our privilege log to reflect these documents and provide redacted replacements where appropriate.

**Claw-Back of Privileged Materials and Related Testimony**

Pursuant to Paragraph 11 of the Protective Order, please return or destroy these documents and any copies, and confirm your compliance. *See* Fed. R. Civ. P. 26(b)(5)(B) (“After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified;”); Protective Order (Dkt. 69) (“Fed. R. Civ. P. 26(b)(5)(B) governs the proper procedure for the notification and return of Privileged Information when identified by the Producing Party.”).

In addition, any recordings of Ms. Stone’s testimony concerning the privileged portions of these clawed-back exhibits must be returned or destroyed, and may not be used or disclosed, including the following portions of the transcript:

<b>Exhibits</b>	<b>Citations to Rough Transcript</b>
7	57:13-60:7
8	64:2-66:22, 68:2-69:8

We will also notify the court reporter and videographer that the above-referenced portions of the transcript have been clawed back and should be removed or redacted from Ms. Stone’s deposition transcript and video. We will provide replacement exhibits to the court reporter and we will work with the court reporter and videographer to provide you with redacted versions of the transcript and video. We are also attaching a redacted version of the rough transcript for your use in the interim.

Please promptly confirm you have complied with this claw-back request.

**Admonition Regarding Other Documents**

Additionally, we have become aware of a vendor issue related to the screening of privileged materials and have reason to believe that other documents containing privileged information may have been inadvertently produced in this case. We are actively investigating the issue and working to identify any other documents that may need to be clawed back.

Please notify us immediately if you encounter any documents that appear on their face to include attorney-client privileged information, including those explicitly marked as such. *See* Protective Order (“If a Receiving Party identifies what appears on its face to be Privileged

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ATTORNEYS-EYES ONLY**

Information, the Receiving Party is under a good-faith obligation to notify that Producing Party.”). In particular, we expect you not to use any documents that appear on their face to contain privileged information, including at depositions, without first notifying us.

Sincerely,



Austin C. Teng

# EXHIBIT 3

(excerpted)



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

SIGHT SCIENCES, INC.,	)	
	)	C. A. No.: 21-1317-GBW-SRF
Plaintiff,	)	
	)	<b>JURY TRIAL DEMANDED</b>
v.	)	
	)	<b>HIGHLY CONFIDENTIAL –</b>
IVANTIS, INC., ALCON RESEARCH LLC,	)	<b>OUTSIDE ATTORNEYS’ EYES</b>
ALCON VISION, LLC AND ALCON INC.,	)	<b>ONLY</b>
	)	
Defendants.	)	

**PLAINTIFF SIGHT SCIENCES, INC.’S  
SUPPLEMENTAL OBJECTIONS AND RESPONSES TO  
DEFENDANTS’ THIRD SET OF INTERROGATORIES (NOS. 12, 13, 18)**

Pursuant to Rule 26 and 33 of the Federal Rules of Civil Procedure and the Local Rules of this Judicial District, Plaintiff Sight Sciences, Inc. (“Sight Sciences”) hereby responds to Defendants Ivantis, Inc., Alcon Research LLC, Alcon Vision, LLC, and Alcon Inc.’s (“Defendants”) Third Set of Interrogatories (Nos. 11-18), dated March 31, 2023.

**GENERAL RESPONSES**

1. Sight Sciences’ response to the Interrogatories is made to the best of Sight Sciences’ present knowledge, information, and belief. This response is at all times subject to such additional or different information that discovery or further investigation may disclose and, while based on the present state of Sight Sciences’ recollection, is subject to such refreshing of recollection, and such additional knowledge of facts, as may result from Sight Sciences’ further discovery or investigation.

2. Sight Sciences reserves the right to make any use of, or to introduce at any hearing and at trial, information and/or documents responsive to the Interrogatories but discovered subsequent to the date of this response, including, but not limited to, any such information or documents obtained in discovery in this action.

“all,” and the words “and” and “or.” Defendants’ usage statements would render the task of interpreting Defendants’ Interrogatories unduly burdensome and would render Defendants’ Interrogatories vague, ambiguous, unintelligible, and compound. Sight Sciences will respond to each Interrogatory according to its ordinary meaning, without reference to Defendants’ usage statements.

### **SPECIFIC OBJECTIONS AND RESPONSES**

Without waiving or limiting in any manner any of the foregoing General Objections, but rather incorporating them into each of the following responses to the extent applicable, Sight Sciences responds to the specific Interrogatories in Defendants’ Third Set of Interrogatories as follows:

#### **INTERROGATORY NO. 12:**

Describe in detail the complete factual and legal bases for any equitable relief You contend You are entitled to, including Your request for a “preliminary and/or permanent injunction per 35 U.S.C. § 283” on page 48 of Your Second Amended Complaint.

#### **RESPONSE TO INTERROGATORY NO. 12:**

Sight Sciences incorporates by reference its General Responses and Objections. Sight Sciences further objects to this Interrogatory to the extent it prematurely seeks expert testimony, which Sight Sciences will disclose in accordance with the Scheduling Order. Sight Sciences objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege or protection from discovery, or to the extent it seeks a legal conclusion or legal analysis and would implicate the mental impressions of counsel to provide a proper response.

Subject to the foregoing general and specific objections, Sight Sciences responds as follows:

Sight Sciences is entitled to injunctive relief because, as a consequence of Defendants' infringing activities, (1) Sight Sciences has suffered and continues to suffer irreparable harm; (2) legal remedies, such as money damages, are inadequate to compensate Sight Sciences for harm from infringement; (3) the balance of hardships favors entry of an injunction; and (4) the public interest would not be disserved by an injunction. *See eBay Inc. v. MercExchange, LLC*, 547 U.S. 388, 391 (2006). Sight Sciences presently contends the following with respect to each prong of the *eBay* four-factor test:

**Irreparable Harm.** Sight Sciences has suffered, and continues to suffer, irreparable harm from Defendants' infringement in a number of ways. Exemplary harms from Defendants' infringement of Sight Sciences' Asserted Patents include: (1) Defendants have and are causing Sight Sciences' OMNI Surgical System to lose goodwill, sales and market share as a result of Defendants' marketing and sales of the infringing the Hydrus Microstent, [REDACTED]; (2) Sight Sciences' OMNI Surgical System has experienced and continues to experience price erosion as a result of competition with Defendants' infringing the Hydrus Microstent; (3) Defendants have induced and continue to induce their customers to use viscoelastic injection devices instead of the OMNI Surgical System, including a 30/38 gauge needle or cannula or the Streamline device to inject a bolus of visco into Schlemm's canal during canal surgery and/or prior to implanting the Hydrus Microstent, resulting in lost sales and profits; (4) Defendants are and have been encouraging their customers to refuse meetings with Sight Sciences sales representatives, thereby preventing Sight Sciences from expanding its customer base and sales of the OMNI Surgical System; (5) Defendants have and are teaching medical residents and licensed physicians to implant the Hydrus Microstent instead of using the OMNI Surgical System, causing Sight Sciences to lose

goodwill, current and future market share, and sales as a result of physicians adopting the Hydrus Microstent, and after becoming familiar with it, refusing to learn about, be trained on, or adopt the OMNI Surgical System; and (6) Defendants' planned introduction of the Indus canaloplasty device and marketing of that device for combination therapy with the Hydrus Microstent would harm Sight Sciences' goodwill, OMNI Surgical System sales and market share, and result in additional price erosion.

At least the following accounts have been negatively impacted as a result of Defendants' infringement: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Pursuant to Federal Rule of Civil Procedure 33(d), Sight Sciences further identifies the following exemplary documents from which information regarding Sight Sciences' irreparable harm may be ascertained: SGHT0049042; SGHT0044296; SGHT0054736; SGHT0022307; SGHT0054687; SGHT0054687; SGHT0038237; SGHT0039286; SGHT0054389; SGHT0054671; SGHT0008470; SGHT0009324; SGHT0011673; SGHT0017838; SGHT0027847; SGHT0128469; IVANTIS\_SS\_00209067; IVANTIS\_SS\_00203800 ; IVANTIS\_SS\_00203935; IVANTIS\_SS\_00215403; IVANTIS\_SS\_00215458; IVANTIS\_SS\_00170715; IVANTIS\_SS\_00170766; IVANTIS\_SS\_00286986; IVANTIS\_SS\_00227183; IVANTIS\_SS\_00170731; IVANTIS\_SS\_00168819; IVANTIS\_SS\_00224822; IVANTIS\_SS\_00331502; IVANTIS\_SS\_00331502; IVANTIS\_SS\_00331626; IVANTIS\_SS\_00232636; IVANTIS\_SS\_00203800; IVANTIS\_SS\_00204037.

**Inadequate Remedies at Law.** Money damages are inadequate to compensate Sight Sciences for harm to its goodwill, or for lost sales, market share, and price erosion impacting the OMNI Surgical System, which have harmed and will continue to harm Sight Sciences' ability to compete in the marketplace with the OMNI Surgical System and other products and services it will introduce in the future that would be used in combination therapy with the OMNI Surgical System. Additionally, the past, current, and future harms to Sight Sciences' business resulting



from Defendants' training of physicians and residents to adopt the Hydrus Microstent has caused and will continue to cause physicians and healthcare facilities to refuse to adopt the OMNI Surgical System, preventing Sight Sciences from winning new business. All of the foregoing types of harm are difficult or impossible to fully and completely quantify, especially because Defendants possess a larger salesforce and greater financial resources than Sight Sciences, and have used (and are using) those resources to directly and indirectly affect customer and physician attitudes, beliefs, and behaviors concerning the Hydrus Microstent and the OMNI Surgical System in a variety of ways (including through payments to KOLs, funding speaker dinners, attendance at events, and marketing activities) that are difficult or impossible to quantify.

**Balance of the Hardships.** Defendants compete with Sight Sciences in the marketplace. Sight Sciences is a small company and its growth has been materially harmed by Defendants' infringement. By contrast, Alcon is a large multinational company with a significant portfolio spanning numerous products beyond that of the Accused Products and would not be materially impacted by a permanent injunction. The balance of the hardships further weighs against Defendants because Defendants willfully infringed the Asserted Patents.

**Public Interest.** The public interest would not be disserved by an injunction for several reasons. As an initial matter, the Hydrus Microstent is one of several MIGS devices (including the OMNI Surgical System) that has received FDA-approval for the treatment of glaucoma. As an example, the OMNI was approved by the FDA in 2017 and is indicated to perform *ab interno* canaloplasty followed by transluminal trabeculotomy either as a standalone procedure or in combination with cataract surgery. *See* [https://www.accessdata.fda.gov/cdrh\\_docs/pdf20/K202678.pdf](https://www.accessdata.fda.gov/cdrh_docs/pdf20/K202678.pdf). The OMNI Surgical System's indication encompasses that of the Hydrus Microstent, which is indicated in conjunction with

cataract surgery to reduce intraocular pressure (“IOP”) in patients with mild to moderate glaucoma. *See* <https://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfPMA/pma.cfm?id=P170034>. Relevant data shows that the OMNI Surgical System is more efficacious than the Hydrus Microstent and that Sight had (and has) the capacity to serve every Hydrus patient, (*see, e.g.*, SGHT0154465; IVANTIS\_SS\_00148281), such that enjoining Defendants’ infringing activities would have no detrimental effect on patients both with respect to the availability and the effectiveness of treatment.

Moreover, there exists a strong public interest in the protection of intellectual property and enforcement of patent rights for inventive technologies. *Douglas Dynamics, LLC v. Buyers Prod. Co.*, 717 F.3d 1336, 1346 (Fed. Cir. 2013). The public interest thus weighs in favor of protecting the patent rights that Sight Sciences secured in the Asserted Patents.

Discovery is ongoing and Sight Sciences reserves the right to amend, supplement or otherwise change its response to this Interrogatory, including by asserting additional theories, arguments, contentions, or other evidence uncovered during fact and expert discovery.

**FIRST SUPPLEMENTAL RESPONSE TO INTERROGATORY NO. 12:**

Subject to the foregoing general and specific objections, Sight Sciences additionally responds as follows:

Pursuant to Federal Rule of Civil Procedure 33(d), Sight Sciences further identifies the following documents from which information responsive to this Interrogatory may be ascertained: SGHT0166268; SGHT0167451.

Sight Sciences continues to reserve the right to modify and/or supplement this response as fact and expert discovery proceed.

Sight Sciences continues to reserve the right to modify and/or supplement this response as fact and expert discovery proceed.

YOUNG CONAWAY STARGATT & TAYLOR, LLP

*/s/ Melanie K. Sharp*

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Dated: June 1, 2023

*Attorneys for Sight Sciences, Inc.*

# EXHIBIT 4

(excerpted)

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

SIGHT SCIENCES, INC.,	)	C. A. No.: 21-1317-GBW-SRF
	)	
Plaintiff,	)	<b>JURY TRIAL DEMANDED</b>
	)	
v.	)	<b>HIGHLY CONFIDENTIAL –</b>
	)	<b>OUTSIDE ATTORNEYS’ EYES</b>
IVANTIS, INC., ALCON RESEARCH LLC,	)	<b>ONLY</b>
ALCON VISION, LLC AND ALCON INC.,	)	
	)	
Defendants.	)	

**PLAINTIFF SIGHT SCIENCES, INC.’S OBJECTIONS AND RESPONSES TO  
DEFENDANTS’ FOURTH SET OF INTERROGATORIES (NOS. 19-21)**

Pursuant to Rule 26 and 33 of the Federal Rules of Civil Procedure and the Local Rules of this Judicial District, Plaintiff Sight Sciences, Inc. (“Sight Sciences” or “Sight”) hereby responds to Defendants Ivantis, Inc., Alcon Research LLC, Alcon Vision, LLC, and Alcon Inc.’s (“Defendants”) Fourth Set of Interrogatories (Nos. 19-21), dated May 5, 2023.

**GENERAL RESPONSES**

1. Sight Sciences’ response to the Interrogatories is made to the best of Sight Sciences’ present knowledge, information, and belief. This response is at all times subject to such additional or different information that discovery or further investigation may disclose and, while based on the present state of Sight Sciences’ recollection, is subject to such refreshing of recollection, and such additional knowledge of facts, as may result from Sight Sciences’ further discovery or investigation.

2. Sight Sciences reserves the right to make any use of, or to introduce at any hearing and at trial, information and/or documents responsive to the Interrogatories but discovered subsequent to the date of this response, including, but not limited to, any such information or documents obtained in discovery in this action.

objects to this Interrogatory to the extent it seeks information protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege or protection from discovery, or to the extent it seeks a legal conclusion or legal analysis and would implicate the mental impressions of counsel to provide a proper response.

Subject to the foregoing general and specific objections, Sight Sciences responds as follows:

Pursuant to Federal Rule of Civil Procedure 33(d), Sight Sciences identifies the following documents from which information responsive to this Interrogatory may be ascertained: SGHT0166268; SGHT0152605; SGHT0153024; SGHT0153029; SGHT0167451; IVANTIS\_SS\_00420586; IVANTIS\_SS\_00337117.

Sight Sciences continues to reserve the right to modify and/or supplement this response as fact and expert discovery proceed.

**INTERROGATORY NO. 21:**

Explain the complete factual and legal basis of Sight's contention that spoliation has occurred in this case and any remedy Sight contends is appropriate for such purported spoliation. *See* Mar. 9, 2023 Sight's 2d Supp. Resp. to Defendants Interrog. Nos. 4, 5, and 6. A complete response should include an identification of the date(s) on which Sight believes Defendants should have reasonably anticipated litigation with respect to the issues in this case triggering a duty to preserve evidence related to the issues in this case, along with the complete factual and legal basis for which Sight believes Defendants should have reasonably anticipated litigation as of that (those) date(s).

**RESPONSE TO INTERROGATORY NO. 21:**

Sight Sciences incorporates by reference its General Responses and Objections. Sight Sciences further objects to this Interrogatory to the extent that it seeks information protected by the attorney-client privilege, attorney work product doctrine, or any other applicable privilege or protection from discovery, or to the extent it seeks a legal conclusion or legal analysis and would

implicate the mental impressions of counsel to provide a proper response. Sight further objects to the extent it seeks to apply a legal definition of “reasonably anticipated” or “duty to preserve.”

Subject to the foregoing general and specific objections, Sight Sciences responds as follows:

On or around March 5, 2008, Ivantis became aware of the disclosures in the patent application to which the Asserted Patents claim priority (U.S. Patent Appl. No. 11/475,523 (“the ’523 Application”)), which published as U.S. Publ. No. 2007/0298068 (“the ’068 Publication”). *See* Defendants’ May 30, 2023 Third Supplemental Response to Interrogatory No. 1 at p. 9.

Between late 2008 and early 2009, Ivantis sought to purchase the ’523 Application and the related intellectual property from Sight. On December 18, 2008, Ivantis’s then-counsel Jim Shay of Shay Glenn LLP indicated that he had been forwarded the ’068 Publication from Ivantis and asked Sight’s patent counsel Mika Mayer to set up a meeting between Ivantis and the patent application owners to discuss the ’068 Publication. *See* SGHT0029566; SGHT0029567-568; SGHT0029569; SGHT0029570; SGHT0029571-572; SGHT0029573-574. Paul Badawi met with Doug Roeder at the offices of Delphi Ventures (3000 Sand Hill, Building 1, Suite 135) on January 7, 2009. *See* SGHT0029575-577. During the meeting, Mr. Roeder explained that Delphi Ventures was an investor in Ivantis and generally described Ivantis’s business. Based upon the information Mr. Roeder shared, Mr. Badawi realized that Ivantis would be a competitor. Mr. Badawi explained to Mr. Roeder that his goal was to build a company around the intellectual property he and his brother had developed, and rejected Mr. Roeder’s overtures made on behalf of Ivantis. There were no further discussions.

On October 16, 2012, U.S. Patent No. 8,287,482 (“the ’482 patent”) (an Asserted Patent) issued from the ’523 Application. Shortly thereafter, in 2013, Ivantis hired outside patent litigation counsel at Arnold & Porter Kaye Scholer LLP (“Arnold & Porter”). *Glaukos Corp. v. Ivantis, Inc.*, 2020 WL 10501850, at \*5 (C.D. Cal. Jun. 17, 2020) (“[I]n 2013, Ivantis hired outside litigation counsel to conduct diligence related to Glaukos’s patents.”); *see also* IVANTIS\_SS\_00172370-703 (Sept. 26, 2019 Dep. Tr. of David Van Meter) at -424 (55:3-12)



(testifying that Ivantis first retained litigation counsel from Arnold & Porter “in roughly, I would say, 2013 or so”); *In re Ivantis, Inc.*, C.A. No. 20-147, D.I. 2-1 (Ivantis’s Petition for Writ of Mandamus) at 43 (Fed. Cir. Aug. 24, 2020) (stating that Ivantis hired Arnold & Porter in 2013 “to handle diligence-related matters”); *id.* at D.I. 15 (Glaukos’s Response) at 23 (Fed. Cir. Sept. 15, 2020) (“[I]n 2013 Ivantis retained two patent trial litigators at Arnold & Porter specifically to perform ‘an analysis of certain patents owned by [Glaukos] in connection with Ivantis’ Hydrus Microstent.”). Ivantis argued in the *Glaukos* Litigation that its retention of Arnold & Porter in 2013 to perform patent diligence was **not** related to that litigation. 2020 WL 10501850, at \*4; IVANTIS\_SS\_00172424.

In June 2013, the same year Ivantis hired outside patent litigation counsel, Ivantis instituted an automatic email deletion policy that “automatically (without any action by the user) delete[d] emails older than 365 days from the server”—***without regard to the email’s subject matter***. See *Glaukos Corp. v. Ivantis, Inc.*, 8:18-cv-00620-JVS-JDE (“*Glaukos* Litigation”), D.I. 495-12 (Van Meter Decl.), ¶ 4 (C.D. Cal. Apr. 10, 2020); see also *id.* at ¶ 3 (“[E]mails would be retained for 365 days after the communication.”); see also *id.* at D.I. 425-23 (C.D. Cal. Mar. 23, 2020) (“Ivantis had an email retention policy in place for several years that automatically deletes emails after 12 months.”); see also *Glaukos*, 2020 WL 10501850, at \*6, n.4 (C.D. Cal. June 17, 2020) (providing the text of the adverse inference instruction, including that Ivantis “adopted and maintained a policy that deleted ***all company email*** after 12 months, resulting in the destruction of virtually all emails at Ivantis that pre-date April 2017”) (emphasis added). Ivantis suspended this automatic email deletion policy on April 19, 2018; “[t]hus, emails as of April 19, 2017 were not subject to the mandatory deletion policy.” 2020 WL 10501850, at \*1; see also *Glaukos* Litigation, D.I. 495-12 (Van Meter Decl.), ¶ 5. Accordingly, Ivantis’s automatic deletion policy affected emails from June 2013 to April 19, 2017.

To the extent emails regarding Sight’s Asserted Patents (or related applications or publications) existed on Ivantis’s server between June 2013 and April 19, 2017, those emails would have been automatically deleted after 365 days. Notably, during this time period of

automatic deletion, two additional Asserted Patents issued from the '523 Application—U.S. Patent Nos. 9,370,443 (“the '443 patent”) on June 21, 2016, and 9,486,361 (“the '361 patent”) on November 8, 2016.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *cf. In re Ivantis, Inc.*, C.A. No. 20-147, D.I. 15 at 31 (“[I]n 2016 Ivantis assured investors that it had retained a ‘top patent litigation firm.’”). On information and belief, [REDACTED] would have—or at minimum should have—identified the '482 patent, which issued in 2012, and the '443 patent, which issued in June 2016. [REDACTED]

[REDACTED]

[REDACTED] that would or should have identified at least two of the Asserted Patents, Defendants have produced documents indicating

that Ivantis and/or its legal counsel monitored the Badawi brothers' and then Sight's patent portfolio ever since Ivantis's unsuccessful purchasing attempt in 2008, for example:

- In “Summer 2007[.]” Ivantis conducted a “[r]obust patent search” that was “*periodically updated*[.]” IVANTIS\_SS\_00417127 at -147 (Date Last Modified 3/6/2008) (emphasis added).
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- An “Expense detail” spreadsheet for Denali Vision includes expenses for “Consulting – IP Search” with projections through December 2009. IVANTIS\_SS\_00417162 (“Vision detail” tab, row 20) (Date Last Modified 3/6/2008).
- Defendants produced a copy of Sight’s ’068 patent publication with a Date Created of 12/6/2010 and Custodian “Paul Badawi.” IVANTIS\_SS\_00337118.
- Defendants produced a Sight Company Presentation with the following relevant metadata: Date Created 3/15/2013; Date Last Modified 9/25/2013; Filename Sight Sciences Presentation; Author Cynthia Kalb; Custodian Paul Badawi.
- In February 2017, an Ivantis Board of Directors meeting [REDACTED]
- [REDACTED]
- [REDACTED]
- During his September 18, 2019 deposition in the *Glaukos* Litigation, Todd Abraham testified that “[Ivantis’s] team . . . reviews the [IP portfolio] landscape extensively.” IVANTIS\_SS\_00171981 at -056 (76:15-19).
- On October 22, 2019, Ken Galt sent an email [REDACTED]

[REDACTED]

Accordingly, on information and belief, Ivantis was aware of Sight's patent portfolio, including the Asserted Patents, and knew that the Hydrus Microstent infringed at least one claim of the Asserted Patents. Ivantis's monitoring of Sight and Sight's patent portfolio starting in December 2008 at latest (as described above), coupled with Ivantis's automatic email destruction policy from June 2013 to April 2017, indicates, on information and belief, that Ivantis spoliated evidence relating to Ivantis's infringement of the Asserted Patents. *Bull v. United Parcel Serv., Inc.*, 665 F.3d 68, 73 (3d Cir. 2012); *Micron Tech., Inc. v. Rambus Inc.*, 645 F.3d 1311, 1323 (Fed. Cir. 2011) (finding that defendant "was on notice of potentially infringing activities" following licensing discussions because "[o]nce the patent issued, the gun was loaded; when the targets were acquired, it was cocked; all that was left was the pull the trigger by filing a complaint").

Sight expects that the noticed depositions of third parties Jim Shay, Steve McAuley, and Matthew Wolf will further reveal that Ivantis knew or should have known that it infringed at least one claim of the Asserted Patents and anticipated or should have anticipated that a lawsuit would be filed after the Hydrus's commercialization. Sight also expects that the outstanding document request subpoenas to third parties Steve McAuley and Arnold & Porter will further reveal that Ivantis knew or should have known that it infringed at least one claim of the Asserted Patents and anticipated or should have anticipated that a lawsuit would be filed after the Hydrus's commercialization.

Additionally, Sight's pending motion to compel production of certain litigation materials from the *Glaukos* Litigation and its related appeal (collectively, "*Glaukos* Litigation Materials"), will be heard by Judge Fallon on June 12, 2023. (D.I. 170; *see also* May 24, 2023 Docket Entry.) If Judge Fallon grants Sight's motion to compel, Sight expects that the production of the *Glaukos* Litigation Materials—and particularly the unredacted briefs and appendices filed in *In re Ivantis, Inc.*, C.A. No. 20-147 (Fed. Cir.)—will reveal relevant facts and Sight will supplement this Interrogatory upon receiving such information.

Appropriate remedies for spoliation by Ivantis in this case include (1) an adverse inference instruction under Fed. R. Civ. P. 37(e)(2), (2) a finding by the Court that this is an exceptional case under 35 U.S.C. § 285, (3) a finding by the jury that Ivantis's and Alcon's infringement was and is willful and an award of treble damages for past infringement, (4) entry of a permanent injunction against Defendants based on a finding, *inter alia*, that the balance of the equities favors Sight Sciences and not Defendants as a result of Ivantis's spoliation of evidence, (5) a sanction prohibiting Ivantis from referring to any pre-suit investigation of the Asserted Patents as a basis for believing that it did not infringe or that the Asserted Patents were invalid, *see* 2020 WL 10501850, at \*4, and (6) pursuant to Rule 37 of the Federal Rules of Civil Procedure, an award of Sight Sciences' attorneys' fees and costs associated with briefing and arguing discovery motions relating to Sight's motions to compel discovery relating to Ivantis's spoliation.

Sight Sciences continues to reserve the right to modify and/or supplement this response as fact and expert discovery proceed.

YOUNG CONAWAY STARGATT & TAYLOR, LLP

*/s/ Melanie K. Sharp*

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Dated: June 5, 2023

*Attorneys for Sight Sciences, Inc.*

# EXHIBIT 5

(excerpted)

UNCERTIFIED ROUGH DRAFT - FOR ATTORNEYS' EYES ONLY

1                   ROUGH ASCII -- NOT CERTIFIED

2                   N O T I C E

3

4           This transcript is an UNCERTIFIED ROUGH DRAFT  
5 TRANSCRIPT.

6           It contains raw output from the court reporter's  
7 stenotype machine translated into English by the court  
8 reporter's computer, without the benefit of proofreading.

9           It may contain mistranslations (wrong words) and  
10 misspellings. These and any other errors will be  
11 corrected in the final transcript. Since this rough draft  
12 transcript has not been proofread, the court reporter  
13 cannot assume responsibility for any errors therein.

14          This rough draft transcript is intended to assist  
15 attorneys in their case preparation and is not to be  
16 construed as the final transcript. It is not to be read  
17 by the witness or quoted in any pleading or for any other  
18 purpose and may not be filed with any court.

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UNCERTIFIED ROUGH DRAFT - FOR ATTORNEYS' EYES ONLY

1 THE VIDEOGRAPHER: Here begins Media Number 1 in the  
2 videotaped deposition of Paul Badawi in the matter of  
3 Sight Sciences Inc. versus Ivantis Inc. et al., in the  
4 United States District Court for the District of Delaware  
5 Case Number 211317VACSRF. Today's date is June 23rd,  
6 2023. The time on the video monitor is 9:06 a.m. Pacific  
7 Standard Time. The videographer today is Lucien Newell  
8 representing Planet Depos. This video deposition is  
9 taking place at 3175 Hanover Street, Palo Alto California,  
10 94304.

11 Would counsel please voice identify themselves  
12 and state whom they represent.

13 MS. HEFFERNAN: Jeannie Heffernan, Kirkland & Ellis  
14 representing the defendants in the case. With me are Noah  
15 Frank and Justin Bova. Nathaniel DeLucia on Zoom and Adam  
16 Pierson is here via Zoom.

17 MS. RHYU: Michelle Rhyu of the Cooley firm on behalf  
18 of Sight Sciences and the witness.

19                   Jeremy Hayden, chief legal officer of Sight  
20    Sciences.

21           THE VIDEOGRAPHER:   Okay.   The court reporter today is  
22   Christa Yan representing Planet Depos.   The witness will  
23   now be sworn.

24   BY MS. HEFFERNAN:

25           Q     Good morning, Mr. Badawi.

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UNCERTIFIED ROUGH DRAFT - FOR ATTORNEYS' EYES ONLY

1           A     Good morning.

2           Q     Will you please state your name, your full name  
3   for the record?

4           A     Paul Badawi.

5           Q     And where do you live?

6           A     I live in Atherton, California.

7           Q     What's your address?

8           A     64 Irving Avenue.

9           Q     And what's your business address?

10          A     440 Campbell Avenue, Menlo Park, California.

11          Q     Have you ever been deposed before?

12          A     I have not.

13          Q     Okay.   I'm sure you've gone over it with your  
14   counsel but you and I need to take turns speaking so the

14 litigation, you know, that's -- that comes into effect  
15 only if something makes it to commercialization. You  
16 wouldn't litigate on something precommercial. So I think  
17 again, I think it was 2018 when Hydrus was launched.

18 Q Why wouldn't you litigate on something before  
19 it's commercially launched?

20 MS. RHYU: And there, I just instruct you not to  
21 reveal the substance of any communications with counsel.  
22 If you have a separate understanding, if you extract out  
23 your communications with counsel, you can answer that  
24 question, go ahead. Otherwise I instruct you not to  
25 answer.

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UNCERTIFIED ROUGH DRAFT - FOR ATTORNEYS' EYES ONLY

1 THE WITNESS: That's just my understanding of  
2 infringement litigation. If something is commercial  
3 and... that's just my understanding of it.

4 BY MS. HEFFERNAN:

5 Q In terms of seeing and looking at the Hydrus and  
6 thinking that it was covered by your claims, when did you  
7 first draw that conclusion or have that impression?

8 A I think it was pretty early on. And I can't

9 recall the exact moment, but it was pretty early on when I  
10 first saw it. I don't know if it was 2008 or 2009.

11 Q Do you remember in connection with -- strike  
12 that.

13 Do you remember how you became aware of Hydrus  
14 during that time frame?

15 A There are different possibilities. It was so  
16 long ago. It could have been, it could have been  
17 something I saw online, it could have been a press release  
18 on a development around it or a fundraising or... I  
19 can't -- I can't remember exactly how.

20 But I think it was around that, that time frame.

21 Q Was that -- did you come to the conclusion that  
22 Hydrus was covered by your claims -- or sorry, when you  
23 came to the conclusion that Hydrus was covered by your  
24 claims in that 2008, 2009 time frame, did you think about  
25 bringing litigation?

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UNCERTIFIED ROUGH DRAFT - FOR ATTORNEYS' EYES ONLY

1 MS. RHYU: Objection; assumes facts and misstates the  
2 prior testimony.

3 THE WITNESS: You know, I think, you know, invention,  
4 when I looked at it, I thought that it's, you know, it's

15 Q So that's the 06 application.

16 A Okay.

17 Q Or publication.

18 You meet with Doug Roeder in 2009 and that the  
19 068 is referenced in the email, you recall that, right?

20 A Yes.

21 Q At the time you met with Doug Roeder in 2009, you  
22 had a belief that Hydrus fell within the scope of that  
23 application, right?

24 MS. RHYU: Objection, assumes facts.

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UNCERTIFIED ROUGH DRAFT - FOR ATTORNEYS' EYES ONLY

1 BY MS. HEFFERNAN:

2 Q I think you already said that this morning, I'm  
3 just circling back.

4 MS. RHYU: Mischaracterizes prior testimony.

5 BY MS. HEFFERNAN:

6 Q Did you?

7 A I -- that meeting I mean, we're going back now.  
8 I went to meet with him. They wanted to -- they came at  
9 us for our patent. And I articulated how excited we were  
10 about our invention and what it was. And I think the

11 invention that I described, I described our invention.

12 Q Did you tell him you believed that that invention  
13 covered the Hydrus product?

14 MS. RHYU: Assumes facts.

15 MS. HEFFERNAN: It doesn't, it's a question, did you.

16 MS. RHYU: You're assuming he knew what the Hydrus was  
17 at that time.

18 MS. HEFFERNAN: He did, he already testified this  
19 morning he --

20 MS. RHYU: No he didn't, he said he wasn't sure about  
21 the timing.

22 BY MS. HEFFERNAN:

23 Q Did you tell Mr. Roeder that you believed the 068  
24 covered the Hydrus?

25 MS. RHYU: Same objections, assumes facts.

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UNCERTIFIED ROUGH DRAFT - FOR ATTORNEYS' EYES ONLY

1 THE WITNESS: I can't remember the -- I can't remember  
2 the exact, the exact words. But my -- my intent in going  
3 there was to make clear what our invention in 2006  
4 described. And different, you know, and I made that  
5 clear. So...

6 BY MS. HEFFERNAN:

7 Q Did you make that clear that you had a belief  
8 that the 068 covered the Hydrus?

9 MS. RHYU: Lacks foundation, assumes facts.

10 MS. HEFFERNAN: It doesn't lack foundation, it's his  
11 open knowledge.

12 MS. RHYU: It lacks foundation because you haven't  
13 established when he became aware of the Hydrus.

14 MS. HEFFERNAN: I already did this morning, so...

15 MS. RHYU: You didn't.

16 BY MS. HEFFERNAN:

17 Q You can answer the question, did you make that  
18 connection for him. So it's one thing to talk about your  
19 invention. Did you then make the connection between your  
20 invention and the Hydrus for Mr. Roeder?

21 MS. RHYU: Same objection.

22 THE WITNESS: I think my recollection -- I think he  
23 had that connection.

24 BY MS. HEFFERNAN:

25 Q He said I think your 068 patent covers the

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UNCERTIFIED ROUGH DRAFT - FOR ATTORNEYS' EYES ONLY

1 Hydrus, covers --

2           A     No, not like that, but I think it was, yeah, they  
3     wanted to meet. They had it. They were interested.

4 Q But you didn't tell him that was your belief?

5 MS. RHYU: Again same objections, assumes facts, lacks  
6 foundation.

7 BY MS. HEFFERNAN:

8 Q It's just yes or no, did you tell him that was  
9 your belief?

10           A     Again, I can't -- I can't recall.

11 Q Can't recall, that's fine.

12           A     No, I want to finish my response. I can't recall  
13     the exact words in that meeting, it was 15, 14 years ago,  
14     but I do recall making it clear which was what I wanted to  
15     make sure I did. We have very important IP and we're very  
16     excited about it. And it -- and I described, I  
17     described -- I described it.

\_\_\_\_\_

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[illegible]

15 Q So I'll move to strike that answer as  
16 nonresponsive.

20           A     I don't believe at the time.

22 FDA approval for Hydrus, did you tell Ivantis that you  
23 believed the 482 read on Hydrus?

24 A I don't recall any time, you know, just the  
25 meeting, the 2009 meeting with Doug Roeder talking about

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1 it.

2 Q You talked about the 482 reading on Hydrus with  
3 Doug Roeder in 2009?

4 A Sorry, I thought you were asking about the first  
5 one.

6 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

13 Q Okay. What was the business decision not to sue  
14 Ivantis in 2018?

15 A Yeah, those days were I mean, you know, all the  
16 private, private med tech company, you're living to get to  
17 the next round of financing. We were not in 2018 in a

# EXHIBIT 6

(excerpted)

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1                   ROUGH ASCII -- NOT CERTIFIED

2                   N O T I C E

3

4           This transcript is an UNCERTIFIED ROUGH DRAFT  
5 TRANSCRIPT.

6           It contains raw output from the court reporter's  
7 stenotype machine translated into English by the court  
8 reporter's computer, without the benefit of proofreading.

9           It may contain mistranslations (wrong words) and  
10 misspellings. These and any other errors will be  
11 corrected in the final transcript. Since this rough draft  
12 transcript has not been proofread, the court reporter  
13 cannot assume responsibility for any errors therein.

14          This rough draft transcript is intended to assist  
15 attorneys in their case preparation and is not to be  
16 construed as the final transcript. It is not to be read  
17 by the witness or quoted in any pleading or for any other  
18 purpose and may not be filed with any court.

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1 THE VIDEOGRAPHER: Here begins Media Number 1 in the  
2 videotaped deposition of Paul Badawi in the matter of  
3 Sight Sciences Inc. versus Ivantis Inc. et al., in the  
4 United States District Court for the District of Delaware  
5 Case Number 21-1317-GBW-SRF. Today's date is June 26,  
6 2023. The time on the video monitor is 9:14 a.m. Pacific  
7 Standard Time. The videographer today is Joe Ramirez  
8 representing Planet Depos. This video deposition is  
9 taking place at Cooley LLP Palo Alto. Will counsel please  
10 voice identify themselves and state whom they represent.

11 MS. HEFFERNAN: Jeannie Heffernan of Kirkland & Ellis  
12 for the defendants and with me on the Zoom are Noah Frank,  
13 Justin Bova and Nathaniel DeLucia also with Kirkland &  
14 Ellis and Adam Pierson of Alcon.

15 MS. RHYU: Michelle Rhyu of Cooley representing Sight  
16 Sciences and the witness and with me on Zoom is our  
17 in-house counsel Jeremy Hayden.

18 THE VIDEOGRAPHER: The court reporter today is Christa

19 Yan representing Planet Depos. The witness will now be  
20 sworn.

21 BY MS. HEFFERNAN:

22 Q Good morning, Mr. Badawi. Welcome back.

23 A Good morning, thank you.

24 Q Do you understand that you have been under oath  
25 since you took the oath on Friday morning?

2

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UNCERTIFIED ROUGH DRAFT - FOR ATTORNEYS' EYES ONLY

1 A Yes.

2 Q Did you discuss your testimony with anyone?

3 A No.

4 Q Did you do anything to prepare for today's  
5 deposition, I mean, this part of the deposition, apart  
6 from what we discussed on Friday?

7 A No.

8 Q So nothing, no additional preparation over the  
9 weekend?

10 A No.

11 Q Okay. Did you search for any documents over the  
12 weekend?

13 A I don't believe, I don't think so.

14 Q What are you a little confused about?

15           A     Well, busy weekend. So... I'd like to answer  
16 accurately. I don't think I did.

17           Q     Okay. Did you review any documents over the  
18 weekend for today's deposition?

19           A     I don't think I did.

20           Q     Does Sight Sciences have a document retention  
21 policy?

22           A     We do.

23           Q     And is that a formal written policy?

24           A     I'd have to check with our IT, head of IT but I  
25 believe, I believe we do have a formal policy.

3

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1           Q     Okay. When was that policy put into place?

2           A     As it relates to this litigation?

3           Q     No. Just in general. Document retention policy.  
4 When was the first document retention policy put into  
5 place?

6           A     I can't recall. I... I mean, I know just a  
7 general, general matter, we keep all of our documents.

8           Q     Forever?

9           A     Yeah, I mean, we don't, we don't delete

10 documents.

11 Q You've never deleted an email you've received  
12 ever in the course of your work?

13 A No, I have, I have. I generally try to keep all  
14 of my work emails. I delete spam. You know, I delete,  
15 yeah stuff that I think is not pertinent to work.

16 Q What is Sight Sciences document retention policy  
17 for emails?

18 A We have them, you know, they're on, all of our  
19 emails are on our computers and there's a backup. We have  
20 a very, very strong head of IT, everything's backed up,  
21 certainly one drive I believe is the backup. So we've  
22 got -- he's got everything. He's very, very well  
23 experienced. Very happy. When we could build out this  
24 team, to do it more professionally and yeah, I think you  
25 should have full confidence that we have all of our

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1 records.

2 Q You --

3 MS. RHYU: I'll note for the record this is outside  
4 the scope of 30B6 testimony. This is personal testimony.

5 BY MS. HEFFERNAN:



6 Q So you have every record of the company since  
7 2006; is that correct?

8 A No, I mean, that's -- that's -- I can't say that.  
9 Generally, the intent is to keep everything that's  
10 pertinent to work. We haven't proactively like deleted  
11 anything. We delete some things, I think is not pertinent  
12 to work, again, but just generally I don't want to make a  
13 statement like there's nothing ever... because I can't,  
14 you know, that's 15, 16, 17 years. Has an email, you  
15 know,... but, you know, nothing, I can't think of anything  
16 pertinent specific to this, for example.

17 Q What is the retention period for emails, are you  
18 telling me it's forever, it's permanent?

19 A I think so. I mean, so I think in going back for  
20 this exercise as we went back in our records, I'm pretty  
21 sure like once I had started a Sight Sciences email, that  
22 those emails are all there. I don't know, with 2010.  
23 2011.

24 Q So my question's a little different. It's not  
25 whether you could go back and find some emails from 2010.

1 My question is, you stated that there is a formal document  
2 retention policy in place at Sight Sciences. And my  
3 question is, according to that policy, what is the  
4 document retention period for emails, is it permanent?

5 A Oh. I haven't read that policy. I haven't read  
6 that policy.

7 Q Okay.

8 A I...

9 MS. RHYU: And I'll just clarify, I said that this  
10 testimony is outside the scope of 30B6 testimony. And I  
11 intended for that statement to apply to this line of  
12 questioning. Not just the particular question.

13 THE WITNESS: I'd just like to add, I haven't read it  
14 right now in preparation for this to speak to every, every  
15 detail in that policy.

16 BY MS. HEFFERNAN:

17 Q When was that policy put in place?

18 MS. RHYU: Asked and answered.

19 THE WITNESS: Well, I know there was a document  
20 retention policy put in place specifically around this  
21 litigation.

22 BY MS. HEFFERNAN:

23 Q So that's a different thing. That's -- that's  
24 sort of a document preservation notice or hold.

25 A Okay.

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1           Q     I'm talking about ordinary course of business,  
2     irrespective of this litigation. A document retention  
3     policy. Do you understand the difference between those  
4     two things?

5           A     Yes, that was helpful.

6           Q     Okay. So thinking not about a document  
7     preservation notice in connection with this litigation.

8           A     Okay, yeah.

9           Q     But thinking about a document retention policy.  
10    Do you have one at Sight Sciences?

11          MS. RHYU: Asked and answered.

12          THE WITNESS: I'd like to -- I'd like to speak with  
13    our head of IT. But, you know, everything, everything is  
14    backed up. So...

15    BY MS. HEFFERNAN:

16          Q     Do you have like a written formal policy that has  
17    by category of document or information what the retention  
18    period is?

19          A     I don't -- I can't, I don't know.

20          Q     Okay.

21          A     But, but with everything backed up and we don't

# EXHIBIT 7

(excerpted)



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# Transcript of Jesse Selnick

**Date:** June 19, 2023

**Case:** Sight Sciences, Inc. -v- Ivantis, Inc., et al.

**Planet Depos**

**Phone:** 888.433.3767

**Email:** [transcripts@planetdepos.com](mailto:transcripts@planetdepos.com)

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Transcript of Jesse Selnick  
Conducted on June 19, 2023

1 (1 to 4)

1	IN THE UNITED STATES DISTRICT COURT	1	A P P E A R A N C E S
2	FOR THE DISTRICT OF DELAWARE	2	
3	-----X	3	ON BEHALF OF PLAINTIFFS:
4	SIGHT SCIENCES, INC., :	4	ORION ARMON, ESQUIRE
5	Plaintiff, :	5	COOLEY, LLP
6	v. :Civil Action No:	6	55 Hudson Yards
7	:21-1317-GBW-SRF	7	New York, New York 10001
8	IVANTIS, INC., ALCON RESEARCH :	8	212.479.6000
9	LLC, ALCON VISION, LLC, and :	9	
10	ALCON INC., :	10	
11	Defendants. :	11	ON BEHALF OF DEFENDANTS:
12	-----X	12	NATHANIEL DeLUCIA, ESQUIRE
13		13	KIRKLAND & ELLIS LLP
14	HIGHLY CONFIDENTIAL - OUTSIDE ATTORNEYS' EYES ONLY	14	601 Lexington Avenue
15	DEPOSITION OF JESSE SELNICK	15	New York, New York 10022
16	MONDAY, JUNE 25, 2023	16	212.446.4800
17	9:32 A.M.	17	
18		18	ALSO PRESENT:
19		19	Jeremy Hayden, Esq. - Sight Sciences
20		20	Noah Frank, Esq. - Kirkland
21		21	Bill Leitsch - TM
22		22	Harold Rodriguez - Videographer
23	Job No.: 495141	23	
24	Pages 1 - 293	24	
25	Reported by: Adrienne Mignano, RPR	25	
2		4	
1	Deposition of JESSE SELNICK, held at the law	1	C O N T E N T S
2	firm of:	2	
3		3	EXAMINATION OF JESSE SELNICK PAGE
4	COOLEY, LLP	4	By Mr. DeLucia 7
5	55 Hudson Yards	5	By Mr. Armon 289
6	New York, New York 10001	6	By Mr. DeLucia 290
7		7	
8		8	E X H I B I T S
9	Pursuant to Notice, before Adrienne M.	9	(Attached to the transcript)
10	Mignano, a Notary Public and Registered Professional	10	SELNICK DEPOSITION EXHIBITS PAGE
11	Reporter in and for the State of New York.	11	Exhibit 1 Schedule 14A SEC filing for 17
12		12	Sight Sciences, Inc.
13		13	Exhibit 2 Defendants' Notice of Deposition 9
14		14	of Jesse Selnick Pursuant to
15		15	Federal Rule of Civil Procedure
16		16	Rule 30(b)(1)
17		17	Exhibit 3 Defendants' Notice of Deposition 0
18		18	of Plaintiff Pursuant to Federal
19		19	Rule of Civil Procedure Rule
20		20	30(b)(6)
21		21	Exhibit 4 IPO Prospectus for Sight 87
22		22	Sciences Common Stock
23		23	Exhibit 5 Morgan Stanley presentation 100
24		24	titled "Redefining the Eye Care
25		25	Experience"
			Exhibit 6 Stifel document titled 107
			"Discussion Materials"
			Exhibit 7 Excel spreadsheet, Bates number 25
			SGHT0021536
			Exhibit 8 Excel spreadsheet, Bates number 31
			SGHT0057230
			Exhibit 9 Excel spreadsheet, Bates number 65
			SGHT0049072
			Exhibit 10 Sight Sciences' 10-K for the 186
			Fiscal Year Ended 12-31-22
			Exhibit 11 Excel document titled "P&L Data 08
			FY 18-23"

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Transcript of Jesse Selnick  
Conducted on June 19, 2023

15 (57 to 60)

<p>57</p> <p>1 Q Have you reviewed any of the patents</p> <p>2 that are asserted in this case?</p> <p>3 A No.</p> <p>4 Q So you don't have an opinion one way</p> <p>5 or the other, as a legal or technical matter,</p> <p>6 whether the Hydrus infringes those patents?</p> <p>7 A No.</p> <p>8 Q But am I correct that Paul Badawi,</p> <p>9 for example, communicated a belief that Ivantis</p> <p>10 was infringing on Sight Sciences' intellectual</p> <p>11 property?</p> <p>12 A He has communicated that to me.</p> <p>13 Q You mentioned "others with more</p> <p>14 detailed knowledge." Who else at Sight Sciences</p> <p>15 communicated a belief that Ivantis or the Hydrus</p> <p>16 was infringing Sight Sciences' intellectual</p> <p>17 property?</p> <p>18 MR. ARMON: I'll caution you not to</p> <p>19 answer to the extent that it would implicate</p> <p>20 attorney-client communications. So you may</p> <p>21 answer to the extent that your answer does not</p> <p>22 implicate attorney-client communications.</p> <p>23 A The only other person that I have</p> <p>24 ever had a conversation with about it that had</p> <p>25 their own sort of -- that I would say had their</p>	<p>59</p> <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 Q If Sight Sciences had had the money</p> <p>16 in [REDACTED] was it your understanding that they</p> <p>17 would have pursued litigation against Ivantis at</p> <p>18 that time?</p> <p>19 MR. ARMON: Objection based on it</p> <p>20 calls for speculation.</p> <p>21 A Yeah, you know, we never had that</p> <p>22 conversation, that if we had \$30 million or</p> <p>23 whatever -- you know, pick a number, would we</p> <p>24 pursue enforcing the patents. That wasn't a</p> <p>25 conversation we ever had. It was our reality</p>
<p>58</p> <p>1 own ability to derive an opinion because of</p> <p>2 their knowledge of the patent was David Badawi.</p> <p>3 Q So setting aside lawyers, the</p> <p>4 individuals at Sight Sciences who communicated</p> <p>5 this belief that Ivantis might be infringing</p> <p>6 Sight Sciences' intellectual property were Paul</p> <p>7 and David Badawi; is that correct?</p> <p>8 A Correct. They have the most</p> <p>9 familiarity with Helix's intellectual property.</p> <p>10 Q And when was the first time that</p> <p>11 either Paul or David Badawi communicated this</p> <p>12 belief to you?</p> <p>13 A The first time I can recall is when I</p> <p>14 joined the company in [REDACTED] that there was kind</p> <p>15 of a more detailed conversation about this</p> <p>16 belief.</p> <p>17 Q And what was that detailed</p> <p>18 conversation?</p> <p>19 A That there was a belief that Hydrus</p> <p>20 infringed upon Helix's intellectual property.</p> <p>21 I'm not capable of having a more substantive</p> <p>22 conversation than that because I don't have the</p> <p>23 familiarity with patents in general or medical</p> <p>24 device patents or stent patents. So it was more</p> <p>25 of a statement than a robust conversation.</p>	<p>60</p> <p>1 that we didn't. And so it wasn't something that</p> <p>2 we discussed further.</p> <p>3 Q Did you get the impression from</p> <p>4 Mr. Badawi that he would have liked to pursue</p> <p>5 litigation against Ivantis back in [REDACTED]</p> <p>6 MR. ARMON: Objection. Form.</p> <p>7 A Yeah, I would say Paul spent a lot of</p> <p>8 time and thought in working on our intellectual</p> <p>9 property portfolio, and Paul feels extremely</p> <p>10 passionate about anyone that he has a view or a</p> <p>11 view -- a more informed view by him and other</p> <p>12 experts that is potentially infringing upon it.</p> <p>13 So I'm not a mind reader, but it is</p> <p>14 a -- it was a differentiator for our business,</p> <p>15 is a differentiator today for Sight Sciences.</p> <p>16 And so, yeah, there is always going to be a</p> <p>17 desire, or if there is the ability to, to</p> <p>18 enforce the intellectual property.</p> <p>19 Q Was it your understanding that the</p> <p>20 plan was to enforce Sight Sciences' intellectual</p> <p>21 property at some point in the future once it had</p> <p>22 the funding to do so?</p> <p>23 MR. ARMON: Objection. I'll instruct</p> <p>24 you not to answer that question on the basis of</p> <p>25 attorney-client privilege.</p>

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# EXHIBIT 8

## (excerpted)



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

SIGHT SCIENCES, INC.,

Plaintiff,

vs.

Case No.  
21-1317-GBW-SRF

IVANTIS, INC., ALCON  
RESEARCH, LLC, ALCON VISION,  
LLC, and ALCON, INC.,

Defendants.

~~~~~

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REMOTE VIDEORECORDED DEPOSITION OF JAMES SHAY

JUNE 20, 2023, 9:13 A.M.

WITNESS SITUATED IN SAN FRANCISCO, CALIFORNIA

Reported by Megan M. Grossman-Sinclair  
CSR No. 12586

1 APPEARANCES OF COUNSEL  
2 (All appearances via Zoom Videoconference)

3  
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25 Steven.dirks@kirkland.com

The Videographer:

JOSEPH NEW

Also Present:

JULIE RUSE, DM/IST  
Cooley LLP

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|----|------------------------------------------|------|
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| 4  | Deposition in a Civil Action.            |      |
| 5  | Exhibit 60 Website profile of James      | 21   |
| 6  | Shay.                                    |      |
| 7  | Exhibit 63 E-mail by Tom Zlogar          | 40   |
| 8  | April 11, 2008, Subject:                 |      |
| 9  | Ivantis Due Diligence                    |      |
| 10 | Materials.                               |      |
| 11 | Exhibit 64 Ivantis IP Review PowerPoint  | 41   |
| 12 | April 9, 2008.                           |      |
| 13 | Exhibit 66 Ivantis Patents and           | 56   |
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| 23 | December 18, 2008.                       |      |
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2 WITNESS: JAMES SHAY

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| 5 | By Ms. Heffernan | 143    |

QUESTIONS NOT ANSWERED

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INFORMATION REQUESTED

PAGE LINE

(None)

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| 2 | MARKED                                   | PAGE |
| 3 | Exhibit 85 U.S. Patent No. US 9,486,361  | 117  |
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| 6 | Exhibit 88 U.S. Patent No. US 7,740,604  | 128  |
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| 8 | Statement by Applicant.                  |      |

\*\*\*

Page 34

1 BY MS. STROSNIK:

2 Q. Yeah, let me rephrase. Did you  
3 conduct any patent searches for Ivantis?

4 MS. HEFFERNAN: You can answer that  
5 question "yes" or "no."

6 THE WITNESS: Yes.

7 BY MS. STROSNIK:

8 Q. Did you conduct any freedom to  
9 operate analysis for Ivantis?

10 MS. HEFFERNAN: Again, you can  
11 answer that question "yes" or "no."

12 THE WITNESS: Yes.

13 BY MS. STROSNIK:

14 Q. When did you provide FTO analysis  
15 for Ivantis?

16 MS. HEFFERNAN: Objection; vague,  
17 and you can answer with a date or dates if you  
18 recall. But nothing further.

19 THE WITNESS: I don't recall  
20 specific dates of doing freedom to operate  
21 analyses.

22 BY MS. STROSNIK:

23 Q. Did you perform more than one FTO  
24 analysis for Ivantis?

25 MS. HEFFERNAN: You can answer that

Page 36

1 BY MS. STROSNIK:

2 Q. Did you provide FTO analysis less  
3 often than an annual basis?

4 MS. HEFFERNAN: Objection; vague.  
5 You can answer that "yes" or "no."

6 THE WITNESS: I am struggling even  
7 with a yes-or-no answer because it implies that  
8 there is aperiodicity to it, that there is a time  
9 frame, you know, every so whatever number of  
10 months or years.

11 MS. HEFFERNAN: I think that's  
12 where you should stop.

13 THE WITNESS: I am going to stop.  
14 Instruction from my counsel.

15 BY MS. STROSNIK:

16 Q. Did you perform FTO analysis on a  
17 regular basis for Ivantis?

18 MS. HEFFERNAN: Objection; vague.  
19 You can answer that question "yes" or "no."

20 THE WITNESS: No.

21 BY MS. STROSNIK:

22 Q. But you performed FTO analysis for  
23 Ivantis when they requested it; right?

24 MS. HEFFERNAN: You can answer that  
25 "yes" or "no."

Page 35

1 "yes" or "no."

2 THE WITNESS: Yes.

3 BY MS. STROSNIK:

4 Q. About how often did you provide FTO  
5 analysis for Ivantis?

6 MS. HEFFERNAN: Objection; vague.

7 And clarifying the question, did you say about how  
8 often or about how long?

9 MS. STROSNIK: About how often.

10 MS. HEFFERNAN: Objection; vague,  
11 and you can answer the question if you have an  
12 answer, but just be careful.

13 THE WITNESS: No, I understand.

14 And also, you know, over 15 years, the answer to  
15 how often is almost meaningless. So I -- I really  
16 can't answer that.

17 BY MS. STROSNIK:

18 Q. Did you provide FTO analysis on at  
19 least an annual basis?

20 A. On -- did you say on an annual  
21 basis?

22 Q. Yes.

23 MS. HEFFERNAN: You can answer that  
24 "yes" or "no."

25 THE WITNESS: No.

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1 THE WITNESS: Yes.

2 BY MS. STROSNIK:

3 Q. Did you perform any patent  
4 litigation for Ivantis?

5 MS. HEFFERNAN: You can answer that  
6 "yes" or "no." Objection; vague.

7 THE WITNESS: No.

8 BY MS. STROSNIK:

9 Q. Are you aware of the fact that Shay  
10 Glenn transferred its Ivantis files to Alcon in  
11 connection with Alcon's acquisition of Ivantis in  
12 January 2022?

13 A. Yes.

14 Q. Were you involved in that transfer  
15 of Ivantis files?

16 MS. HEFFERNAN: You can answer  
17 "yes" or "no."

18 THE WITNESS: Yes.

19 BY MS. STROSNIK:

20 Q. When was that transfer done?

21 A. I don't specifically remember. I  
22 don't remember the date.

23 Q. It was after Alcon completed the  
24 acquisition of Ivantis; right?

25 A. Yes.

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1 THE WITNESS: Slide 10, got it.

2 BY MS. STROSNICK:

3 Q. Do you see this slide title Freedom  
4 to Operate?

5 A. Yes.

6 Q. And there are three key points to  
7 keep in mind listed; correct?

8 A. I see that, yes.

9 Q. To your knowledge, as of the date  
10 of this presentation, April 9th, 2008, Shay Glenn  
11 had performed a freedom to operate analysis for  
12 Ivantis; correct?

13 A. I don't know. It depends on your  
14 definition of a freedom to operate analysis.

15 Q. How would you define freedom to  
16 operate analysis?

17 A. I think there are multiple ways to  
18 define it. One is by scope. How many -- well,  
19 one way is by scope and another way is by the  
20 specific item. So, for example, you can perform a  
21 freedom to operate analysis on a single patent.  
22 Or you could do an analysis of a whole field. You  
23 can -- the size of the analysis can be -- the  
24 scope of the analysis can be limited to particular  
25 subject matter, particular geographies, US patents

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1 THE WITNESS: I know you don't want  
2 that. I want to be careful about that. So the  
3 pending question is did Ivantis ever ask us to  
4 perform a freedom to operate analysis on a single  
5 patent.

6 MS. STROSNICK: Yes.

7 THE WITNESS: The answer to that is  
8 yes.

9 BY MS. STROSNICK:

10 Q. Do you remember the time frame of  
11 when Ivantis asked you to provide a freedom to  
12 operate analysis on a single patent?

13 MS. HEFFERNAN: I think that might  
14 be getting closer to attorney-client privileged  
15 communications.

16 THE WITNESS: Yeah, I am getting  
17 concerned about that too. I think I am going to  
18 have to decline to answer that because it pertains  
19 to advice the client was asking me to provide.

20 BY MS. STROSNICK:

21 Q. I am not looking for anything  
22 privileged here. I'm just asking about the fact  
23 of when to your recollection that FTO analysis  
24 occurred.

25 A. I understand. I understand what

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1 versus European patents, for example. There are  
2 many different ways to define a freedom to operate  
3 analysis.

4 Q. Would Shay Glenn perform a freedom  
5 to operate analysis with respect to a single  
6 patent for Ivantis?

7 A. I think I can answer that question  
8 generally, but I don't feel comfortable answering  
9 it in specific to work done for a client. But I  
10 think in general when asked we would perform a  
11 freedom to operate analysis for a single patent,  
12 yes.

13 Q. And do you recall whether you did  
14 in fact perform an FTO analysis for a single  
15 patent for Ivantis at any point?

16 MS. HEFFERNAN: I think you can  
17 answer that "yes," "no," or "I don't know."  
18 Unless you -- unless you disagree. You know your  
19 work better than I do so... And by that I mean  
20 unless you disagree that that reveals --

21 THE WITNESS: Yeah, no. That's  
22 what I am struggling with. Again, I don't want to  
23 cross the attorney-client privilege line.

24 MS. STROSNICK: It may reveal  
25 privileged information and I don't --

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1 you are asking I think, but I also am concerned  
2 that the time frame of it, once you start talking  
3 about time frame, patents have time frames, right,  
4 they have grant dates and publication dates and  
5 filing dates. So by honing in on a time frame,  
6 you are honing on specifics about advice that a  
7 client sought. And that just makes me feel  
8 uncomfortable. I don't want to cross that  
9 attorney-client privilege line. I'm sorry.

10 Q. Okay. So you are refusing to  
11 answer the question based on privilege?

12 A. Yes.

13 Q. Going back to another type of FTO  
14 analysis you mentioned, do you recall the fact of  
15 whether you ever provided an FTO analysis for  
16 Ivantis regarding a larger field of the IP  
17 landscape?

18 MS. HEFFERNAN: You can answer that  
19 "yes," "no," or "I don't know" if you don't  
20 recall.

21 THE WITNESS: I don't recall  
22 specifically, no.

23 BY MS. STROSNICK:

24 Q. Okay. Going back to Exhibit 64.  
25 As of the date of this document, April 9, 2008,

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1 Shay Glenn was at least contemplating performing a  
2 freedom to operate for Ivantis; correct?

3 A. You are -- your question assumes  
4 things that we haven't established. I see what  
5 this document says, but as I said, I don't know  
6 who authored this document. I don't know if this  
7 is actually something from Shay Glenn despite a  
8 logo appearing at the bottom. And I don't know  
9 that I can agree with your -- the conclusion you  
10 are trying to make me draw. I just -- because I  
11 don't know. I don't have -- I don't have the  
12 basis for that.

13 Q. Apart from this document, can you  
14 remember whether Shay Glenn performed any freedom  
15 to operate analysis for Ivantis in the 2008 time  
16 frame?

17 A. I -- 15 years ago? I don't recall.

18 Q. Do you recall anything about the  
19 timing of when Shay Glenn provided an FTO analysis  
20 to Ivantis?

21 MS. HEFFERNAN: Objection; vague.  
22 And you can answer I guess "yes," "no," or "I  
23 don't know." Or "don't recall" rather.

24 THE WITNESS: Yeah, as point of  
25 clarification, are you talking about issues

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1 "Question: Do you recall anything  
2 about the timing of when Shay Glenn  
3 provided an FTO analysis to  
4 Ivantis?")

5 BY MS. STROSNICK:

6 Q. And let me rephrase that actually.  
7 Do you recall when Shay Glenn provided an FTO  
8 analysis to Ivantis?

9 MS. HEFFERNAN: You can answer that  
10 "yes," "no," "I don't recall."

11 THE WITNESS: I don't specifically  
12 recall, no.

13 BY MS. STROSNICK:

14 Q. But you do recall that Ivantis did  
15 provide an FTO analysis -- or, sorry. You do  
16 recall that Shay Glenn provided an FTO analysis  
17 for Ivantis at some point while you were  
18 representing them; right?

19 MS. HEFFERNAN: Again, you can  
20 answer that "yes," "no" --

21 THE WITNESS: Yes.

22 BY MS. STROSNICK:

23 Q. Let's take a look back at slide 10  
24 of Exhibit 64. Do you see this lists key points  
25 to keep in mind and the first key point says:

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1 relevant to the lawsuit that we are here to talk  
2 about or at any time in the -- you know, the  
3 15-year representation or whatever it was, 14  
4 years representing Ivantis?

5 BY MS. STROSNICK:

6 Q. I am just talking generally right  
7 now.

8 A. So the question is have -- do I  
9 recall ever being asked by Ivantis to perform a  
10 freedom to operate review of a single patent or of  
11 more than a single patent at any time in my  
12 representation of them? Is that the question?

13 Q. Yes.

14 MS. HEFFERNAN: That was not the  
15 question, actually.

16 THE WITNESS: Oh, okay. I don't  
17 understand the question.

18 MS. HEFFERNAN: So why don't -- if  
19 the court reporter to read the actual question  
20 that was asked back to the witness, that would be  
21 helpful. So the court reporter is going to do  
22 that now so we can't talk while she does that.

23 THE WITNESS: I'll wait. I'll  
24 wait.

25 (Record read as follows:

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1 "Implants (shunts, dents,  
2 et cetera) maintain patency of AH  
3 flow path are old."

4 Did I read that correctly?

5 A. More or less, yes.

6 Q. What do you mean by more or less?

7 A. Oh, I am -- you know, tomato,  
8 tomato, you say "patency," you "patency."

9 Q. Apologies. And AH refers to  
10 acquiesce humor; correct?

11 A. Yes, it does.

12 Q. Do you read this as commenting on  
13 the novelty or obviousness of patents covering  
14 implants that maintain patency of acquiesce humor  
15 flow path?

16 A. Do I think that today or do I -- is  
17 that what your question is?

18 Q. No, my question is do you read this  
19 first point as talking about the novelty or  
20 obviousness of patents covering implants that  
21 maintain the patency of AH flow path?

22 A. You are asking me to guess about  
23 the meaning of something that I'm not sure I wrote  
24 or I don't know who wrote. So it would just be a  
25 guess.

# EXHIBIT 9

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

|                       |   |                          |
|-----------------------|---|--------------------------|
| SIGHT SCIENCES, INC., | ) |                          |
|                       | ) |                          |
| Plaintiff,            | ) |                          |
|                       | ) |                          |
| v.                    | ) | C.A. No. 21-1317-GBW-SRF |
|                       | ) |                          |
| IVANTIS, INC.,        | ) |                          |
| ALCON RESEARCH LLC,   | ) |                          |
| ALCON VISION, LLC,    | ) |                          |
| and ALCON INC.,       | ) |                          |
|                       | ) |                          |
| Defendants.           | ) |                          |

**DEFENDANTS' NOTICE OF DEPOSITION OF SABRINA KATZ**  
**PURSUANT TO FED. R. CIV. P. 30(b)(1)**

PLEASE TAKE NOTICE that, pursuant to Rule 30 of the Federal Rules of Civil Procedure, counsel for Defendants Ivantis, Inc., Alcon Research LLC, Alcon Vision, LLC, and Alcon Inc. (collectively, "Defendants") will take the deposition of Sabrina Katz before a certified court reporter authorized to administer oaths and record testimony. The deposition will take place on June 29, 2023 beginning at 9:00 a.m. Eastern Time, remotely by video, or at a time and place mutually agreed upon by the Parties. The testimony will be recorded by stenographic and/or video-graphic means.

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Dated: June 14, 2023

/s/ Kat Li

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**CERTIFICATE OF SERVICE**

I, Kat Li, hereby certify that on June 14, 2023, this document was served on the persons listed below in the manner indicated:

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# EXHIBIT 10

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

|                       |   |                          |
|-----------------------|---|--------------------------|
| SIGHT SCIENCES, INC., | ) |                          |
|                       | ) |                          |
| Plaintiff,            | ) |                          |
|                       | ) |                          |
| v.                    | ) | C.A. No. 21-1317-GBW-SRF |
|                       | ) |                          |
| IVANTIS, INC.,        | ) |                          |
| ALCON RESEARCH LLC,   | ) |                          |
| ALCON VISION, LLC,    | ) |                          |
| and ALCON INC.,       | ) |                          |
|                       | ) |                          |
| Defendants.           | ) |                          |

**DEFENDANTS' NOTICE OF DEPOSITION OF SARAH SLOAN MARCUS**  
**PURSUANT TO FED. R. CIV. P. 30(b)(1)**

PLEASE TAKE NOTICE that, pursuant to Rule 30 of the Federal Rules of Civil Procedure, counsel for Defendants Ivantis, Inc., Alcon Research LLC, Alcon Vision, LLC, and Alcon Inc. (collectively, "Defendants") will take the deposition of Sarah Sloan Marcus before a certified court reporter authorized to administer oaths and record testimony. The deposition will take place on June 28, 2023 beginning at 9:00 a.m. Eastern Time, remotely by video, or at a time and place mutually agreed upon by the Parties. The testimony will be recorded by stenographic and/or video-graphic means.

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Dated: June 14, 2023

/s/ Kat Li

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**CERTIFICATE OF SERVICE**

I, Kat Li, hereby certify that on June 14, 2023, this document was served on the persons listed below in the manner indicated:

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# EXHIBIT 11

**From:** Shawn O'Neil <soneil@sightsciences.com>  
**Sent:** Wed, 4 Aug 2021 13:16:43 +0000 (UTC)  
**To:** Chris Phelps <cphelps@sightsciences.com>; John Liu <JLiu@sightsciences.com>; Jeremy Hayden <JHayden@sightsciences.com>; "Jeff Francis" <jfrancis@sightsciences.com>  
**Cc:** Paul Badawi <Paul@sightsciences.com>  
**Subject:** RE: [REDACTED] Follow Up Information

---

Chris, thank you for passing along. I am including Paul on this as well.

Definitely a concern if this is coming from Frank Shields, VP of Sales for Ivantis. This demonstrates that the promotion and encouragement to do a canalostomy procedure but code as canaloplasty (66174) is not isolated and in fact part of a national strategy/direction. This needs to be corrected.

**Shawn O'Neil**

Chief Commercial Officer  
4040 Campbell Avenue Suite 100  
Menlo Park, CA 94025  
Cell: 817-800-0406



**"Delivering the Power of Sight!"**

---

**From:** Chris Phelps <cphelps@sightsciences.com>  
**Sent:** Tuesday, August 3, 2021 9:13 PM  
**To:** Shawn O'Neil <soneil@sightsciences.com>; John Liu <JLiu@sightsciences.com>; Jeremy Hayden <JHayden@sightsciences.com>; Jeff Francis <jfrancis@sightsciences.com>  
**Subject:** Fw: [REDACTED] Follow Up Information

Please see the below

his is quite like what we are hearing now throughout Florida. We are also now aware of this occurring in Georgia particularly the Savannah area. We have some concern it might also be in play in North Carolina yet have no direct evidence yet. The last name of the DM in Carolina is Shields same as the RD in Florida who is well known for this.

Frank Shields, Ali Salo and Andy are 100% involved from what we have gathered albeit Ali has denied it to her own rep and Sarah. Andy is heavily promoting this and selling the cannula.

Sarah has a strong relationship with Dr Dorsett and this account is important to us. He is also friends with Frank Shields so there is some sensitivity in terms of impact on the account in relation to Sarah sharing the information.

We will continue to monitor and pass on any pertinent information that is objective and tangible.

**Chris Phelps**

**East Area Director, Surgical Glaucoma**

4040 Campbell Ave. Ste #100  
Menlo Park, CA 94025

Cell: (816) 820-8081



*"Delivering the Power of Sight!"*

---

**From:** Sarah Sloan <[ssloan@sightsciences.com](mailto:ssloan@sightsciences.com)>  
**Sent:** Tuesday, August 3, 2021 8:52 PM  
**To:** Shawn Hay <[shay@sightsciences.com](mailto:shay@sightsciences.com)>; Chris Phelps <[cphelps@sightsciences.com](mailto:cphelps@sightsciences.com)>  
**Cc:** Sarah Sloan <[ssloan@sightsciences.com](mailto:ssloan@sightsciences.com)>  
**Subject:** [REDACTED] Follow Up Information

Hi Chris & Shawn,

Thank you both for your time today helping me navigate the communication when addressing the situation with a "manually operated, "new canaloplasty" device, reportedly being offered by Ivantis for use with Hydrus.

As a recap of the dialogue and information that took place today 8/3/21 in reference to [REDACTED] which is owned by Dr. Kevin Dorsett, along with his clinic, Lakeland Eye Clinic, please review the following:

As the foundation, [REDACTED] has been longstanding customer and user of OMNI, spanning from late Summer 2019 - current. Today I received a call from Dr. Dorsett's surgery scheduler inquiring about a "new" way to perform a canaloplasty that was being offered by Ivantis. Heather stated she heard it was a "less expensive way to perform a dilation of the canal using a cannula, that may or may not be reusable". She simply wanted to know if I was familiar as she heard from Dr. Dorsett and his technician that there was a meeting to take place on Wednesday 8/4/21 with the Ivantis manager in Florida, Ali Salo, to get more information about this technology.

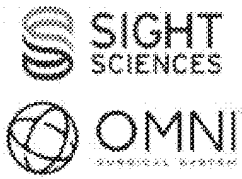
From communication with the local Ivantis rep, Geniene, she was completely unaware of the lunch meeting and repeated to me that, "she is not promoting any canaloplasty type procedure, only Hydrus but that she was aware that Andy Rivera has actively promoted a "new cannula" that costs \$100 which connects directly to a viscoelastic and assists in dilating the canal prior to inserting the Hydrus microstent".

I will find out more information on Thursday after the meeting takes place and Heather reports back. Any new information I will actively pass along directly to you both. Although this account has a longstanding friendship with both Ali and Frank Shields, higher management at Ivantis and residents in my market, I don't suspect Dr Dorsett will proceed forward with off-label use of technology. Either way, I wanted to pass along the information, so you're ware of market activity taking place.

With gratitude,

*Sarah Sloan*  
Surgical Sales, Glaucoma | Southwest Florida  
3000 Sand Hill Rd., Bldg. 3-105  
Menlo Park, CA 94025  
[Ssloan@SightSciences.com](mailto:Ssloan@SightSciences.com)  
Cell: 727-686-1270





# EXHIBIT 12

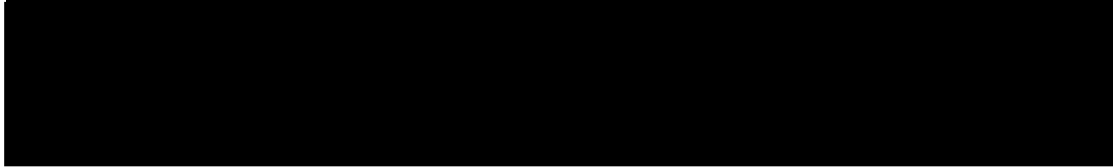
**From:** Shawn Hay <shay@sightsciences.com>  
**Sent:** Wed, 25 Aug 2021 20:24:08 +0000 (UTC)  
**To:** Chris Phelps <cphelps@sightsciences.com>  
**Subject:** Hydrus Cannula intel.  
**Attachments:** IMG\_0959.HEIC;IMG\_0960.HEIC;IMG\_3947.heic

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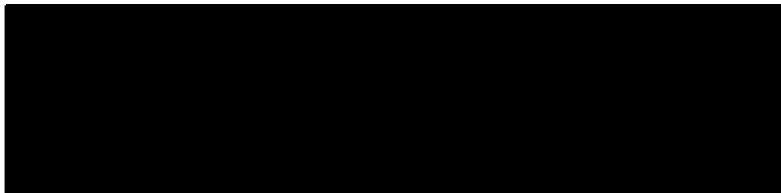
Chris,

In an effort to keep all of this together, below is the information from the previous email.

Lost Business



Accounts we aren't able to gain business due to use.



Below are examples of field intel related to Ivantis and their promotion of the cannula.

1. [REDACTED] Savannah, Ga.
  - a. Dr. Kim shared that the ivantis rep was selling him on using the cannula for his Hydrus cases, Dr. Kim decided not to use it and shared he would rather bend his own cannula than buy that.
  - b. Surgery center confirmed cannulas were dropped off.
  - c. Was the local Ivantis rep not Andy.
2. [REDACTED] Jacksonville, FL.
  - a. Surgery center owned by Dr. Bowden, they confirmed that the local rep dropped off cannula's for use with Hydrus, the doctor did not use them.
3. [REDACTED]
  - a. Dr. Dorsett's staff called Sarah to share that the Ivantis RD had a lunch meeting set up to discuss a new canalplasty option for his Hydrus/ Omni cases.
  - b. Sarah personally addressed this with the Ivantis DM and local Rep and had it shut down.
  - c. During her conversation, the RD let it slip that Andy was charging accounts \$100/ cannula.
4. [REDACTED]
  - a. While at Dr. Mahootchi's cases, I observed a B&L retinal 27 gauge cannula with a sticky note that said "use with Hydrus". I asked doc what it was and he dismissed it as something hes neevr tried.
  - b. It is believed that Ali, Ivantis RD left it for him as she used to be with B&L Surgical.
  - c. Photo of box attached to email.
5. [REDACTED]
  - a. Sabrina was in surgery with Dr. Arosamena, she had multiple Omni's and a coupld of Hydrus. With the

Hydrus cases, she utilized the the cannula that Andy dropped off for those Hydrus cases and confirmed they are billing for them. Photo of cannula attached.

b. She did ensure that this was not taking the place of Omni as she never has combined technologies.

6. Dinner with Dr. Goldman, Dr. Luchs and Dr. Bellotte.

a. During a dinner meeting with Sabrina, Dr. Goldman and Dr. Belotte confirmed with Sabrina that Andy approached them with the cannula as an option to do a "canaloplasty" with Hydrus.

7. [REDACTED]

a. This account called Sarah about an Omni case for Dr. Damon Welch, who had not been trained on Omni. Further investigation revealed that the order to the ASC said canaloplasty and they thought it was for Omni but he was actually doing the canulla plus Hydrus. He and Andy are close.

8. [REDACTED]

a. Dr. Bellotte confirmed with Cara that he was approached by Andy to use the canulla instead of Omni and combine with Hydrus. He did not chose to use it.

9. [REDACTED]

a. Sabrina found a video of Dr. Sayed on youtube using a prolene with the Hydrus canula to perform a "mechanical ccanaloplasty" this was Andy's first attempt to encroach on our business.

b. <https://youtu.be/HkqIC6K1roQ>.

Shawn Hay  
Regional Sales Director, Surgical Glaucoma

**Sight Sciences**

3000 Sand Hill Rd.

Menlo, CA 94025

Cell: 813-388-1027

[shay@sightsciences.com](mailto:shay@sightsciences.com)

[www.sightsciences.com/us/](http://www.sightsciences.com/us/)



# EXHIBIT 13

(excerpted)



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---

**HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY**

# Transcript of Chris Phelps

**Date:** June 15, 2023

**Case:** Sight Sciences, Inc. -v- Ivantis, Inc., et al.

**Planet Depos**

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Transcript of Chris Phelps  
Conducted on June 15, 2023

1 (1 to 4)

|    |    |    |   |
|----|----|----|---|
| 1  | 1  | 1  | 3 |
| 2  | 2  | 2  |   |
| 3  | 3  | 3  |   |
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Conducted on June 15, 2023

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| <p>77</p> <p>1 Q Who would have written this document?</p> <p>2 A I wouldn't -- I wouldn't know. If it's</p> <p>3 marketing, 2020, Patrick was still around, but</p> <p>4 this could have been just about anybody, really.</p> <p>5 If this was something they were doing out of Menlo</p> <p>6 Park. I don't know. I'm not a part of these kind</p> <p>7 of things. This isn't my world.</p> <p>8 Q The second bullet says, "MIGS stents will</p> <p>9 go faster than the market, taking share from</p> <p>10 Trabectome and KDB."</p> <p>11 Do you see that?</p> <p>12 A I do.</p> <p>13 Q And so at least someone at Sight Sciences</p> <p>14 relayed that opinion that MIGS would take share</p> <p>15 from Trabectome and KDB, right?</p> <p>16 A They're predicting that. They didn't say</p> <p>17 it was happening. They're predicting it as a</p> <p>18 marketing thing, or Market Scope predicted it.</p> <p>19 Somebody did. I don't know. Like I said, I'm not</p> <p>20 accurately able to speak to this because these</p> <p>21 aren't things I do. I'm not a part of these kind</p> <p>22 of meetings. So I can't accurately answer what</p> <p>23 this person meant by anything.</p> <p>24 Q You can pull that down.</p> <p>25 So you're located in Iowa, correct?</p> | <p>79</p> <p>1 you interact with on a daily basis?</p> <p>2 A Daily basis? I don't interact with the</p> <p>3 sales reps daily. I interact with my regional</p> <p>4 directors most days. Not all of them, though. At</p> <p>5 least once a week within our -- on some calls.</p> <p>6 But I talk to Mark a decent amount.</p> <p>7 Obviously, he's my boss. I have to.</p> <p>8 And then Brian and I talk probably once a</p> <p>9 week. Brian Heaney.</p> <p>10 Jeff Colburn, I talk probably once every</p> <p>11 two weeks. That's about it.</p> <p>12 Q Do you speak with Mr. Badawi often?</p> <p>13 A No. He's the CEO.</p> <p>14 Q So speaking of the MIG market and some of</p> <p>15 the competitors that we've spoken about, each of</p> <p>16 those competitors has particular advantages or</p> <p>17 disadvantages, right?</p> <p>18 A Each company thinks so. Yes, I'm sorry.</p> <p>19 We feel that we work better than others.</p> <p>20 They feel they work better than us. It's -- they</p> <p>21 have studies. We have studies. But we're all</p> <p>22 trying to accomplish the same goal, which is lower</p> <p>23 IOPs so patients don't go blind.</p> <p>24 Q So aside from sort of potentially</p> <p>25 subjective studies, there are differences and</p> |
| <p>78</p> <p>1 A That's correct.</p> <p>2 Q And so I guess my question is, sort of,</p> <p>3 why -- why Iowa?</p> <p>4 A Well, I'm very close to my children, and</p> <p>5 my children live in Iowa, so I live in Iowa. I</p> <p>6 was still with Alcon when I moved here, and Alcon</p> <p>7 was kind enough to allow me to come here when I</p> <p>8 got divorced and follow my children. I'm very</p> <p>9 close to my children, and I have primary custody.</p> <p>10 So I have to be here.</p> <p>11 Q And so do you travel for work?</p> <p>12 A Of course.</p> <p>13 Q And, generally, where do you travel for</p> <p>14 work?</p> <p>15 A Well, I have the east, so I usually go</p> <p>16 east. My last trip was in Pittsburgh. But more</p> <p>17 often than not, I'm going to Texas for leadership</p> <p>18 meetings, for, you know, whatever. I -- we have</p> <p>19 an office in Texas. You know, I go down and meet</p> <p>20 with Mark or whomever. Not very often. Maybe</p> <p>21 once a quarter.</p> <p>22 My last trip in the field, though, was to</p> <p>23 Pittsburgh a couple weeks ago.</p> <p>24 Q And so, other than your sales reps that</p> <p>25 report up to you, who else at Sight Sciences do</p>                                                     | <p>80</p> <p>1 indications between the different products,</p> <p>2 correct?</p> <p>3 A Correct.</p> <p>4 Q And so, for instance, OMNI has a</p> <p>5 standalone indication such that you don't need to</p> <p>6 use OMNI at the time of cataract surgery, right?</p> <p>7 A That's correct. We do have that</p> <p>8 indication.</p> <p>9 (Court reporter clarification.)</p> <p>10 THE WITNESS: I'm sorry.</p> <p>11 A Yes, we do have that indication.</p> <p>12 Q And I believe there's also differences in</p> <p>13 the severity of disease, correct?</p> <p>14 A I believe so. I'd have to double-check,</p> <p>15 but, yeah.</p> <p>16 Q Now, the standalone indication, I think</p> <p>17 earlier you mentioned something about that you</p> <p>18 weren't pushing it enough.</p> <p>19 Does that ring a bell?</p> <p>20 A No, we push it. We're not successful at</p> <p>21 it. It's maybe 2 percent, 1 percent of our</p> <p>22 business. It's a very difficult thing to sell and</p> <p>23 to -- you're asking surgeons to change their</p> <p>24 algorithm and their way of thinking, things</p> <p>25 they've been doing the same way for a long time.</p>                                                                                                            |



Conducted on June 15, 2023

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| <p>105</p> <p>1 to OMNI?</p> <p>2 <b>A They could switch to OMNI. They could</b></p> <p>3 <b>switch to iStent. They could switch to New World.</b></p> <p>4 <b>They could switch to iTrack. We don't -- we don't</b></p> <p>5 <b>know.</b></p> <p>6 Q And you've never surveyed any physicians</p> <p>7 about what product they would use if Hydrus</p> <p>8 weren't on the market?</p> <p>9 <b>A Not that I'm aware of. I mean, if Hydrus</b></p> <p>10 <b>wasn't on the market, what product would they use?</b></p> <p>11 <b>No, I've never done that. It's not really an</b></p> <p>12 <b>appropriate question you'd ask a surgeon, in my</b></p> <p>13 <b>view.</b></p> <p>14 Q If you didn't have salespeople, you</p> <p>15 wouldn't be selling OMNI, right?</p> <p>16 <b>A That's not a question for me. If we</b></p> <p>17 <b>didn't have salespeople -- if the company existed,</b></p> <p>18 <b>and we didn't have any salespeople, and OMNI was</b></p> <p>19 <b>still on the market, if they wanted to use it,</b></p> <p>20 <b>they'd still be buying it from somebody. So Paul,</b></p> <p>21 <b>me, Mark. I don't know. It's -- I'm not sure</b></p> <p>22 <b>what you're asking there. It's...</b></p> <p>23 Q Well, from when you joined, you said you</p> <p>24 were, what, the seventh salesperson?</p> <p>25 <b>A Yes.</b></p>     | <p>107</p> <p>1 <b>it's not really fair, to say, "Okay. Joe</b></p> <p>2 <b>Smith" -- that's a fake name -- "you have</b></p> <p>3 <b>Missouri, Arkansas, and Oklahoma. Go get 'em."</b></p> <p>4 <b>That's not realistic, right? So it's more</b></p> <p>5 <b>by geography, and you break it down where people</b></p> <p>6 <b>can handle it and still have a life.</b></p> <p>7 Q Now, within that territory, for instance,</p> <p>8 if you started selling double, you'd need to hire</p> <p>9 an additional salesperson, right?</p> <p>10 <b>A No, not necessarily.</b></p> <p>11 Q Why not?</p> <p>12 <b>A Because -- because some geographies are</b></p> <p>13 <b>pretty tight, and, you know, we have territories</b></p> <p>14 <b>where that's occurred, and there is just one rep</b></p> <p>15 <b>that does that. You don't need two.</b></p> <p>16 <b>There's areas where we had to split it up</b></p> <p>17 <b>because it's so big. Like the state of Michigan.</b></p> <p>18 <b>We split it into two because it's such a big</b></p> <p>19 <b>state, right? It's huge. And it wasn't -- it's</b></p> <p>20 <b>not realistic to think that rep down near Detroit</b></p> <p>21 <b>is going to go up to Grand Rapids, which is, what,</b></p> <p>22 <b>seven hours away, driving. That's not realistic,</b></p> <p>23 <b>and it's not fair to the human being.</b></p> <p>24 Q So sales reps visit doctors' offices,</p> <p>25 <b>right?</b></p> |
| <p>106</p> <p>1 Q Okay. And --</p> <p>2 <b>A Somewhere around there.</b></p> <p>3 Q Okay. And now, I think you said, there's</p> <p>4 somewhere upwards of 50?</p> <p>5 <b>A Yeah.</b></p> <p>6 Q Okay. And so I take it, then, the reason</p> <p>7 that you hired more salespeople is to sell more</p> <p>8 OMNIs, right?</p> <p>9 <b>A The reason we hired more salespeople is we</b></p> <p>10 <b>had to hire sales force. If you want to compete</b></p> <p>11 <b>in the MIGS market against companies like Alcon or</b></p> <p>12 <b>Ivantis then and Glaukos, you can't sell to seven</b></p> <p>13 <b>people in the country. If you actually want to</b></p> <p>14 <b>commercialize, then we were very -- when we did</b></p> <p>15 <b>commercialize, we went from seven to, I don't</b></p> <p>16 <b>know, 20 or 22. But that's not a sales force,</b></p> <p>17 <b>seven people.</b></p> <p>18 <b>If you want to compete in the MIGS market,</b></p> <p>19 <b>which is very tough, you need more than seven</b></p> <p>20 <b>people.</b></p> <p>21 Q Now, the more salespeople hire -- you</p> <p>22 hire, ideally, the more sales you make, right?</p> <p>23 <b>A The goal is to cover a geography</b></p> <p>24 <b>appropriately, and whatever number of reps that</b></p> <p>25 <b>turns into, that's where we noted. So it's not --</b></p> | <p>108</p> <p>1 <b>A They visit ambulatory surgery centers.</b></p> <p>2 <b>They visit hospitals. They visit the OR. They</b></p> <p>3 <b>visit clinics sometimes.</b></p> <p>4 Q And salespeople at Sight also sit in in</p> <p>5 surgery, right?</p> <p>6 <b>A Yes. That's part of their job is to go in</b></p> <p>7 <b>the OR.</b></p> <p>8 Q And the more OMNIs you sell, the more your</p> <p>9 sales reps are paid, right?</p> <p>10 <b>A Well, it depends on their quota versus</b></p> <p>11 <b>their commissions. Their salary doesn't change.</b></p> <p>12 <b>And if they meet their quota -- it's about their</b></p> <p>13 <b>quota. They have to meet a quota. It's not about</b></p> <p>14 <b>how many OMNIs you sell. Because you could sell a</b></p> <p>15 <b>hundred OMNIs, but if your goal is 110, you're not</b></p> <p>16 <b>making any money, so...</b></p> <p>17 Q Now, above the quota, though, the more</p> <p>18 OMNIs you sell, the more that sales rep is going</p> <p>19 to make, right?</p> <p>20 <b>A A small incremental amount, yeah.</b></p> <p>21 Q For instance, you made more because you</p> <p>22 went over your quota, right?</p> <p>23 <b>A I made \$300 more, actually. I know that</b></p> <p>24 <b>for a fact because I was mad about it last night,</b></p> <p>25 <b>and I called Mark and I said, "I should have got</b></p>                                                                                 |

# EXHIBIT 14

(excerpted)



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# **Transcript of Richard Allen Plank**

**Date:** May 23, 2023

**Case:** Sight Sciences, Inc. -v- Ivantis, Inc., et al.

**Planet Depos**

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Conducted on May 23, 2023

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Transcript of Richard Allen Plank

6 (21 to 24)

Conducted on May 23, 2023

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| <p>21</p> <p>1 it's not publicly known?</p> <p>2 <b>A Just like I have already answered, just</b></p> <p>3 <b>word of mouth and understanding.</b></p> <p>4 <b>You go into a given city and there's, you</b></p> <p>5 <b>know, eight ophthalmology clinics right around.</b></p> <p>6 <b>You go in and you ask and you understand, you</b></p> <p>7 <b>know, what do they treat, what's the volume. So</b></p> <p>8 <b>just curiosity discovery questions when we go in</b></p> <p>9 <b>and cold call.</b></p> <p>10 Q Is a sales representative's ability to do</p> <p>11 those cold calls and identify those high volume</p> <p>12 surgeons important to effectuating a sale of OMNI?</p> <p>13 <b>A You cut out on that last part. Is the</b></p> <p>14 <b>sales individual responsibility what?</b></p> <p>15 Q Sure. Strike that. Just let me try</p> <p>16 again.</p> <p>17 Is a sales representative's ability to go</p> <p>18 out and identify those potential surgeon targets</p> <p>19 important to facilitating the sale of OMNI?</p> <p>20 <b>A Yes.</b></p> <p>21 Q Let's -- turning back to Plank Exhibit 1.</p> <p>22 Let me see.</p> <p>23 Under the [REDACTED], first</p> <p>24 entry, the first bullet point says, 6/MO. What is</p> <p>25 that referring to?</p>                                     | <p>23</p> <p>1 <b>them calling on that account, asking questions to</b></p> <p>2 <b>the staff, asking questions to the surgeon,</b></p> <p>3 <b>knowing at one time -- as I mentioned, I trained</b></p> <p>4 <b>Dr. Anita Campbell five and a half years ago on</b></p> <p>5 <b>her first OMNI and certified her utilizing OMNI.</b></p> <p>6 <b>And at that time I know that she was using OMNI</b></p> <p>7 <b>more first line and the volume that she was using</b></p> <p>8 <b>and continued to use.</b></p> <p>9 <b>And then Hydrus was introduced. And now</b></p> <p>10 <b>she does some Hydrus, and approximately that many</b></p> <p>11 <b>the prior. And that we believe that if Hydrus was</b></p> <p>12 <b>not available, she would be doing OMNI.</b></p> <p>13 Q So the statement in Plank Exhibit 1, if</p> <p>14 Hydrus was not available these would be OMNI</p> <p>15 cases, that's your conclusion?</p> <p>16 <b>A That is my rep's conclusion, my</b></p> <p>17 <b>conclusion based on historical events.</b></p> <p>18 Q Did Dr. Campbell tell you that if Hydrus</p> <p>19 was not available, she would purchase OMNI?</p> <p>20 <b>A No.</b></p> <p>21 Q The next bullet states, Won't combine</p> <p>22 canalplasty with Hydrus.</p> <p>23 Do you see that?</p> <p>24 <b>A I do.</b></p> <p>25 Q And is "canalplasty" referring to a</p> |
| <p>22</p> <p>1 <b>A We quantify everything on a monthly</b></p> <p>2 <b>average, and then we build that out to what a</b></p> <p>3 <b>quarterly average is. So, you know, to our best</b></p> <p>4 <b>guess, because it's not the same week to week or</b></p> <p>5 <b>month to right. Right? So there's varying</b></p> <p>6 <b>levels. But over a three-month period you can</b></p> <p>7 <b>usually guesstimate within a small margin of</b></p> <p>8 <b>error.</b></p> <p>9 <b>So if we say roughly, you know, 6 a month</b></p> <p>10 <b>or so, or 20 per quarter, would be a good</b></p> <p>11 <b>guesstimate on any given quarter on the amount of</b></p> <p>12 <b>procedures.</b></p> <p>13 Q So 6/MO represents an average of six</p> <p>14 procedures a month?</p> <p>15 <b>A Yes, roughly. And it's just an average,</b></p> <p>16 <b>because it could be ten one month and five the</b></p> <p>17 <b>next or four or what-have-you.</b></p> <p>18 Q And next to that first bullet on Plank</p> <p>19 Exhibit 1 it states, If Hydrus was not available,</p> <p>20 these would be OMNI cases.</p> <p>21 Do you see that?</p> <p>22 <b>A Yes, I do.</b></p> <p>23 Q Where is that -- strike that.</p> <p>24 What is that statement based on?</p> <p>25 <b>A Based on intel from that individual; and</b></p> | <p>24</p> <p>1 canaloplasty? Is that another way of saying that?</p> <p>2 <b>A Canaloplasty, yes.</b></p> <p>3 Q Yeah. And is OMNI a form of</p> <p>4 canaloplasty?</p> <p>5 <b>A Yes.</b></p> <p>6 Q So where does the statement -- or strike</p> <p>7 that.</p> <p>8 What is the basis for the statement,</p> <p>9 won't combine canalplasty with Hydrus, in Plank</p> <p>10 Exhibit 1?</p> <p>11 <b>A Our device, OMNI performs two distinct</b></p> <p>12 <b>procedures -- one is a canaloplasty, one is a</b></p> <p>13 <b>trabeculotomy -- and a lot of surgeons just use</b></p> <p>14 <b>that as a standalone.</b></p> <p>15 <b>It has never been the direction that I</b></p> <p>16 <b>have given to my team or direction from Sight</b></p> <p>17 <b>Sciences to go out and use this in adjunct with</b></p> <p>18 <b>other mixed procedures, but it is widely done</b></p> <p>19 <b>across the industry.</b></p> <p>20 <b>And we hear from accounts and reps from</b></p> <p>21 <b>Alcon that will reach out to our Sight Sciences</b></p> <p>22 <b>reps, and ask to partner with them with some</b></p> <p>23 <b>accounts to combine the two procedures. Because</b></p> <p>24 <b>performing the canaloplasty with the OMNI surgical</b></p> <p>25 <b>system makes it easier, from the feedback that we</b></p>                                        |

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| <p style="text-align: right;">25</p> <p>1 have from surgeons, to insert the Hydrus stent.<br/> 2 And so it was just a comment that she<br/> 3 made in our business review that that's something<br/> 4 that some doctors don't believe in that practice.<br/> 5 She's one that doesn't believe in that practice.<br/> 6 Again, it's not one of our marketing directions to<br/> 7 do that, because we believe that OMNI standalone<br/> 8 is a most efficacious product.<br/> 9 Q I just want to make sure I understood<br/> 10 that correctly.<br/> 11 Did Dr. Campbell tell you that she will<br/> 12 not combine OMNI with Hydrus?<br/> 13 A She did not tell me that, and I do not<br/> 14 know if she told the individual rep that. It was<br/> 15 just a note in our conversation, that's not<br/> 16 something that she practices or does.<br/> 17 Q And who made that note?<br/> 18 A I did.<br/> 19 Q And you said note in your conversation.<br/> 20 Is that a note that you made during a<br/> 21 conversation with Dr. Campbell?<br/> 22 A No.<br/> 23 Q So what conversation did you have in<br/> 24 which you made this note?<br/> 25 A As I shared earlier, when I have business</p>                                                                                                                                                         | <p style="text-align: right;">27</p> <p>1 and sell to. We just acknowledge that some do and<br/> 2 some don't by what they tell us. We don't ask<br/> 3 them, will you.<br/> 4 Q Do you have a sense for how widely done<br/> 5 it is across the industry to combine OMNI with<br/> 6 Hydrus in the same procedure?<br/> 7 A I do. But it would be just my<br/> 8 speculation based on general conversations that I<br/> 9 have with my team in my area and then maybe a<br/> 10 conversation I have with my counterpart that<br/> 11 covered the East.<br/> 12 And my best guesstimate would be -- you<br/> 13 know, it varies from geography to geography, but I<br/> 14 would guesstimate 30 to 40 percent. Again, that's<br/> 15 just, you know, my math based on conversations<br/> 16 that I have with my team.<br/> 17 Q And so I'm understanding that correctly,<br/> 18 30 to 40 percent of OMNI sales are a combination<br/> 19 of OMNI and Hydrus in the same procedure.<br/> 20 Is that what you meant?<br/> 21 A Yes. I would say best guess. And again,<br/> 22 strictly a guess. I don't have anything to<br/> 23 validate that.<br/> 24 Q But your estimate of 30 percent to 40<br/> 25 percent of OMNI sales being combined OMNI/Hydrus</p>                                           |
| <p style="text-align: right;">26</p> <p>1 reviews with my regional directors and sometimes<br/> 2 directly with their surgical sales reps, or it's a<br/> 3 conversation that he or she might have with her<br/> 4 team that he'll relate to me if I'm asking him<br/> 5 questions. Right? I'll just seek to understand.<br/> 6 As I shared earlier, you know, here is<br/> 7 accounts that we have had business. I know that<br/> 8 this is a high volume surgeon. What is our<br/> 9 opportunity there. What's preventing us in your<br/> 10 mind, or your rep's mind, of why we're not getting<br/> 11 X amount of business or we've lost business in<br/> 12 here.<br/> 13 So these would be answers from them in<br/> 14 terms from street intel in questions that they ask<br/> 15 and observations that they make in the field.<br/> 16 Q So the comment "won't combine canalplasty<br/> 17 with Hydrus" in Plank Exhibit 1 is a note that you<br/> 18 made during a conversation with one of your<br/> 19 regional sales reps.<br/> 20 Did I understand that correctly?<br/> 21 A Regional directors, yes. And really it<br/> 22 was -- shouldn't have been "won't." Probably<br/> 23 mistyped. It should say, don't, doesn't combine,<br/> 24 because some doctors do and some doctors don't.<br/> 25 Again, it's not something that we market</p> | <p style="text-align: right;">28</p> <p>1 is based on your experience in the field selling<br/> 2 these things and speaking to reps?<br/> 3 A Yes. I can speak directly to a lot of<br/> 4 accounts that I have been in the OR with or<br/> 5 surgeons, just like Dr. Anita Campbell, that were<br/> 6 OMNI users within the last year plus, two years.<br/> 7 Right?<br/> 8 As doctors get creative in terms of how<br/> 9 they treat, then I do know that the Invantis reps<br/> 10 and then Alcon reps, what I hear from my sales<br/> 11 team, that then they will come in and try to<br/> 12 partner. Or they'll go in and they'll say, hey,<br/> 13 you're using OMNI, why don't you do this and<br/> 14 insert. And that's how it started; they started<br/> 15 to piggyback on a lot of the business that we had.<br/> 16 Q Now, you testified that combining OMNI<br/> 17 with Hydrus is not something that Sight Sciences<br/> 18 markets.<br/> 19 Did I understand that correctly?<br/> 20 A Yeah. It's not the company strategy and<br/> 21 it's nothing that I have ever coached or directed<br/> 22 my team to do.<br/> 23 Q As part of the conversations you have<br/> 24 with potential accounts when marketing OMNI, do<br/> 25 you note that OMNI can be combined with Hydrus in</p> |

**CERTIFICATE OF SERVICE**

I, Karen E. Keller, hereby certify that on June 28, 2023, this document was served on  
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